United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7442

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

OSCAR ROBERTSON, et al.,

Plaintiffs-Appellees,

WILTON N. CHAMBERLAIN, CLIFFORD RAY and CHESTER WALKER,

Appellants,

- against -

NATIONAL BASKETBALL ASSOCIATION, et al.,

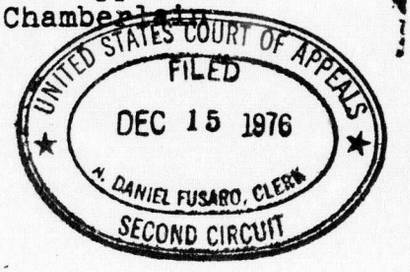
Defendants-Appellees.

III

76-7442
76-7451

JOINT APPENDIX

Volume III
857-1307



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

70 Civ. 1526 (RLC)

STIPULATION and SETTLEMENT AGREEMENT, made and entered into this 29th day of April, 1976, by and among those Plaintiffs on whose behalf this Stipulation and Settlement Agreement is being executed, on behalf of themselves and the members of the class, both described below, on the one hand, and the National Basketball Association (the "NBA"), a joint venture, on behalf of itself and its eighteen members described below, on the other hand.

DEFINITIONS

As used in this Stipulation and Settlement Agreement the following terms shall have the following meanings:

(a) "Class Action" means that action pending in the United States District Court, Southern District of New York, entitled Oscar Robertson, et al. v. National Basketball Association, et al., 70 Civ. 1526 (RLC).

(b) "Complaint" means, collectively, the complaint filed in the Class Action on April 16, 1970, the amended and supplemental complaint filed in the Class Action on April 22, 1974, and the second amended and supplemental complaint filed in the Class Action on November 21, 1975, all of which are collectively annexed hereto as Exhibit A.

(c) "Plaintiffs" means Oscar Robertson, William Bradley, Joe Caldwell, Archie Clark, Mel Counts, John Havlicek, Donald Kojis, Jon McGlocklin, McCoy McLemore, Thomas Meschery, Jeffry Mullins, Westly Unseld, Richard Van Arsdale and Chester Walker, individually and as representatives of the Class Members.

(d) "Class Members" means all NBA players, including Plaintiffs, defined as members of the class in the Notice of Pendency of the Class Action mailed to the class by Order of the Court dated September 15, 1975, a copy of which Notice is annexed hereto as Exhibit B.

(e) "Settling Defendants" means the NBA and the following 18 entities, which are the current members of the NBA: Atlanta Hawks Basketball, Inc., Capital Bullets Basketball Club, Inc., Boston Celtics Basketball Club, Inc., ffalo Braves, Inc., Chicago Professional Sports Corporat , Cleveland Professional Basketball Company, Detroit Pistons Basketball Company, Texas Pro Sports, Inc., Kings Professional Basketball Club, Inc., California Sports Incorporated, Milwaukee Professional Sports & Services, Inc., Madison Square Garden Center, Inc., Riko Enterprises, Inc., Phoenix Professional Basketball Club, Pro Basketball, Inc., San Francisco Warriors, Seattle SuperSonics Corporation and New Orleans Basketball Club.

(f) "Class Counsel" means Weil, Gotshal & Manges.

(g) "Non-Settling Defendant" means the American Basketball Association ("ABA").

(h) "NBA member" or "NBA team" means any team which is a member of the NBA or which operates a franchise in the NBA.

(i) "College Draft" means the NBA's annual draft of basketball players.

(j) "Player Contract" means a written agreement between a person and an NBA team pursuant to which such person is employed by such team as a professional basketball player.

(k) "Uniform Player Contract" means the standard printed forms of Player Contract used in the NBA. (Copies of the forms used during the period from the 1972-1973 through the 1974-1975 NBA playing seasons are annexed hereto as Exhibit C.)

(l) "Option Clause" means any clause in a Player Contract, including, but not limited to, Paragraph 22 of the Uniform Player Contract used during the period from the 1972-1973 through the 1974-1975 NBA playing seasons, which authorizes any extension or renewal of such contract beyond its stated term.

(m) "Rookie" means a person who has never signed a player contract with a team in any professional basketball league.

(n) "Veteran" means a person who has signed at least one player contract with a team in any professional basketball league.

(o) "Veteran Free Agent" means a Veteran who completes his Player Contract by rendering the playing services called for thereunder.

(p) "Court Approval" means the entry of a judgment by the Trial Court in the Class Action, in the form annexed hereto as Exhibit H, approving this Stipulation and Settlement Agreement after a hearing pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

(q) "Closing Date" means the date, following Court Approval, upon which, by lapse of time or otherwise, the judgment entered thereupon shall no longer be subject to review or appeal.

(r) "Negotiate" means, with respect to a player or his representatives on the one hand, and an NBA team or its representatives on the other hand, to engage in any written or oral communication relating to the possible employment of such player by such team as a basketball player, regardless of who initiates such communication.

(s) "Players Association" means the National Basketball Players Association.

WHEREAS, the Plaintiffs, on April 16, 1970, commenced the Class Action pursuant to Rule 23 of the Federal Rules of Civil Procedure; and

WHEREAS, the Complaint in the Class Action alleges a claim against, among others, the Settling Defendants and their predecessors, under Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2), and seeks treble damages and injunctive relief with respect to certain practices of the Settling Defendants and injunctive relief with respect to any merger, consolidation, acquisition or combination by or between the NBA and the Non-Settling Defendant or its members and/or a non-competition agreement between the NBA and the Non-Settling Defendant or their respective members; and

WHEREAS, the Settling Defendants have appeared in the Class Action and have denied all allegations of wrongdoing, have interposed affirmative defenses to the claims

asserted against them, have maintained that their conduct has at all times been legal and proper, and continue to deny any and all liability in connection with the Class Action; and

WHEREAS, this Court has determined by an opinion and order dated February 14, 1975 that the Class Action is a proper class action under Rule 23(b)(1) of the Federal Rules of Civil Procedure and notice thereof has been sent to the Class Members; and

WHEREAS, litigation of the Class Action to date has been expensive, burdensome and time consuming; the Class Members and Settling Defendants, and their attorneys, have conducted intensive investigation of the facts and law relating to the issues raised by the pleadings herein, have engaged in extensive motion practice, have attended a great number of depositions throughout the United States, have produced and examined hundreds of thousands of documents, and have propounded and answered extensive interrogatories; and

WHEREAS, the Class Members and the Settling Defendants wish to put to rest all controversy and to compromise, settle and terminate the Class Action, without the admission by the Settling Defendants of any liability to the Class Members or the validity of any of the claims asserted in the Class Action or the admission by the Class Members of the validity of any defense raised by the Settling Defendants to such claims, upon the terms and conditions set forth herein, so as to avoid further substantial expense and burdensome and protracted litigation; and

WHEREAS, the Class Members and the Settling Defendants, and their attorneys, anticipate that if the Class Action were not settled the trial of the Class Action could extend over several months and final resolution of the issues raised in the Class Action might not occur for several years thereafter; and

WHEREAS, the Class Members and the Settling Defendants have concluded that the settlement of the Class Action in the manner and upon the terms and conditions set forth herein is desirable, fair, reasonable and adequate, and in the best interests of the Class Members and the Settling Defendants.

NOW, THEREFORE, it is hereby STIPULATED AND AGREED, subject to the approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, as follows:

1. This Stipulation and Settlement Agreement shall be observed by and be binding upon the Settling Defendants and the Plaintiffs upon whose behalf it is executed from and after the date hereof, and upon the Class Members from and after Court Approval. The Settling Defendants and the Plaintiffs upon whose behalf this Stipulation and Settlement Agreement is executed covenant that from the date hereof to the Closing Date they shall not take any action or induce or assist others to take any action, directly or indirectly, to delay or hinder the implementation of the terms hereof or any court approval of this Stipulation and Settlement Agreement. In the event, however, that this Stipulation and Settlement Agreement does not receive Court Approval, or if, following Court Approval, the judgment entered thereupon

is vacated, reversed or modified, then this Stipulation and Settlement Agreement shall, at the option of either signatory hereto, be null and void and thereafter need not be observed by any party hereto, and neither the fact of its existence nor anything contained herein shall be used by or referred to in any way by any Class Member, the NBA or any NBA member in any proceeding, including the Class Action. In the event of a contradiction between the terms of this Stipulation and Settlement Agreement, on the one hand, and the Constitution and By-laws, rules, regulations, policies or agreements of the NBA and/or its members, on the other hand, such contradiction shall be resolved so as to effectuate the terms of this Stipulation and Settlement Agreement. (A copy of the NBA Constitution and By-laws presently in effect is annexed hereto as Exhibit D, solely for the purpose of identifying the particular provisions thereof referred to herein.).

2. In order to increase the number of teams in the NBA with which present and future NBA players may negotiate and sign Player Contracts during their careers, the NBA rules relating to the College Draft, Option Clauses and compensation between teams, described in paragraphs A(1), B(1) and C(1) below, will be modified and/or eliminated in the manner set forth in this Stipulation and Settlement Agreement.

A. College Draft

(1) Under present NBA rules, an NBA team which drafts a player in a College Draft is the only NBA team with which such player may negotiate and sign a Player Contract. The present NBA rules place no time limitation on the dura-

tion of the exclusive right of an NBA team, obtained in the College Draft, to negotiate with such player.

(2) Commencing with the College Draft which is to be held between the date hereof and June 10, 1976, and with respect to the College Draft to be held each year thereafter in the period March 1 to June 10, up to and including the College Draft to be held in 1986:

(a) An NBA team which drafts a player shall, during the period from the date of such draft (hereinafter "initial draft") to the date of the next College Draft (hereinafter "subsequent draft"), be the only NBA team with which such player may negotiate or sign a Player Contract, provided that, on or before the September 15 immediately following the initial draft, such team has tendered to such player a Player Contract giving the player at least 30 days to accept and containing at least the minimum salary, if any, then applicable in the NBA (a "required tender"). If, within the period between the initial and subsequent draft, such player has not signed a Player Contract with the NBA team which drafted him in the initial draft, that team loses the exclusive right, which it obtained in the initial draft, to negotiate with the player and the player is then eligible to be drafted by any NBA team in the subsequent draft.

(b) An NBA team which, in the subsequent draft, drafts a player who (i) was drafted in the initial draft, (ii) received a required tender from the team which drafted him in the initial draft and (iii) did not sign a Player Contract with such first team prior to the subsequent draft, shall, during the period from the date of the subsequent draft to the date of the College Draft held in the following year, be the only NBA team with which such player may negoti-

ate or sign a Player Contract, provided such team has made a required tender. If such player has not signed a Player Contract within the period between the subsequent draft and the next College Draft with the NBA team which drafted him in the subsequent draft, that team loses its exclusive right, which it obtained in the subsequent draft, to negotiate with such player, and such player is free to negotiate and sign a Player Contract at any time thereafter with any NBA team, and any NBA team is then free to negotiate and sign a Player Contract with such player, without any penalty or restriction, including, but not limited to, compensation between teams or first refusal rights of any kind.

(c) If a player is drafted in an initial draft and (i) receives a required tender, (ii) does not sign a Player Contract with an NBA team prior to the subsequent draft and (iii) is not drafted by any NBA team in such subsequent draft, the player is free to negotiate and sign a Player Contract at any time thereafter with any NBA team, and any NBA team is then free to negotiate and sign a Player Contract with such player, without any penalty or restriction, including, but not limited to, compensation between teams or first refusal rights of any kind.

(d) If a player is drafted by an NBA team and does not receive a required tender, the player is free to negotiate and sign a Player Contract with any NBA team on the September 16 following such draft and at any time thereafter, and any NBA team is then free to negotiate and sign a Player Contract with such player, without any penalty or restriction, including, but not limited to, compensation between teams or first refusal rights of any kind.

(e) If a player is drafted by an NBA team

in either an initial or subsequent draft and, during a period in which he may negotiate and sign a Player Contract with only the NBA team which drafted him, signs a player contract with a professional basketball team not in the NBA that covers at least the playing season immediately following said initial or subsequent draft, then such NBA team shall retain the exclusive NBA rights to negotiate with and sign the player for the period ending one year from the earlier of the following two dates: (i) the date the player notifies such team that he is available to sign a Player Contract with such team immediately, provided that such notice will not be effective until the player is under no contractual or other legal impediment to sign with such NBA team, or (ii) the date of the College Draft occurring in the twelve-month period from September 1 to August 30 in which the player notifies such NBA team of his availability and intention to play in the NBA during the NBA playing season immediately following said twelve-month period, provided that such notice will not be effective until the player is under no contractual or other legal impediment to play with such team for said season. If during said one-year period the player signs a player contract with a team in another professional basketball league and (a) the player has not made a bona fide effort to negotiate a Player Contract with the NBA team with the exclusive NBA right to negotiate with and sign such player or (b) if such bona fide effort is made and such NBA team makes a bona fide offer of a Player Contract to such player, then such NBA team shall retain the exclusive NBA right to negotiate with and sign the player for additional one-year periods as measured in the preceding sentence; but if the player has made such bona fide effort and

such NBA team fails to make a bona fide offer of a Player Contract to such player, then in no event shall said exclusive NBA right be retained. If the player does not sign a player contract with a team in any professional basketball league within the applicable one-year period, the player is free to negotiate and sign a Player Contract with any NBA team at any time thereafter, and any NBA team is then free to negotiate and sign a Player Contract with such player, without any penalty or restriction, including, but not limited to, compensation between teams or first refusal rights of any kind. Notice hereunder shall be given as provided in paragraph D(12) below.

(f) A person whose high school class has graduated shall become eligible to be selected in a College Draft if he renounces his intercollegiate basketball eligibility by written notice to the NBA at least 45 days prior to such draft. If such person is selected in such draft by an NBA team, the following rules apply:

(i) If the player does not thereafter play intercollegiate basketball, then the NBA team which drafted him shall, during the period from the date of such draft to the date of the draft in which the player would, absent renunciation of intercollegiate eligibility, first have been eligible to be selected, be the only NBA team with which the player may negotiate or sign a Player Contract, provided that such team makes a required tender to the player each year. For purposes hereof, the draft in which such player would, absent renunciation of such intercollegiate eligibility, first have been eligible to be selected, will be deemed the "subsequent draft" as to that player, and the rules applicable to a player who has been drafted in a subsequent draft will apply.

If the player, having been selected in a draft for which he was eligible by virtue of renunciation of intercollegiate eligibility, has not signed a Player Contract with the NBA team which drafted him in such draft following required tenders by that NBA team and is not drafted in the draft in which he would, absent renunciation of intercollegiate eligibility, first have been eligible to be selected, he is free, at any time thereafter, to negotiate and sign a Player Contract with any NBA team and any NBA team is then free to negotiate and sign a Player Contract with such player, without any penalty or restriction, including, but not limited to, compensation between teams or first refusal rights of any kind.

(ii) If the player does thereafter play intercollegiate basketball, then the NBA team which drafted him shall, during the period from the date of such draft to the date of the draft in which the player would, absent renunciation of intercollegiate eligibility, first have been eligible to be selected, be the only NBA team with which the player may negotiate or sign a Player Contract, provided that such team makes a required tender to the player each year. For purposes hereof, the draft in which such player would, absent renunciation of intercollegiate eligibility, first have been eligible to be selected, will be deemed the "initial draft" as to that player, and the rules applicable to a player who has been drafted in an initial draft will apply. If the player, having been selected in a draft for which he was eligible by virtue of renunciation of intercollegiate eligibility, has not signed a Player Contract with the NBA team which drafted

him in such draft following required tenders by that NBA team and is not drafted in the draft in which he would, absent renunciation of intercollegiate eligibility, first have been eligible to be selected, he is free, at any time thereafter, to negotiate and sign a Player Contract with any NBA team and any NBA team is then free to negotiate and sign a Player Contract with such player, without any penalty or restriction, including, but not limited to, compensation between teams or first refusal rights of any kind.

(g) A person whose high school class has graduated, who has not been selected in a College Draft, and who signs a player contract with a professional team not in the NBA shall thereupon become eligible to be selected in the next College Draft, and if so selected, shall be treated as though he were a player referred to in subparagraph (2)(e) above.

(3) In the event that the exclusive right to negotiate with a player is assigned by an NBA team to another NBA team, in accordance with NBA procedures, the team to which such right has been assigned shall have the same, but no greater, right to negotiate with such player as enjoyed by the team assigning such right, and such player shall have the same, but no greater, obligation to the team to which such right has been assigned as he had to the team assigning such right.

(4) Nothing contained herein shall prevent violations by NBA teams of the exclusive NBA rights to negotiate with or sign players, as set forth or referred to in paragraphs A(2) and A(3) above, from being dealt with by the NBA in accordance with the applicable provisions of the NBA Constitution and By-laws.

B. Option Clauses

(1) Paragraph 22 of the Uniform Player Contract heretofore in effect in the NBA contains an Option Clause that:

(a) grants to the NBA team an option to renew the contract for only one year beyond the stated term of such contract (the "option year");

(b) may be exercised only once; and

(c) provides that the compensation payable with respect to the option year may be no less than 100% of the compensation payable to the player with respect to the last year of the stated term of such Player Contract and that all other non-monetary terms applicable in the last year of the stated term of such Player Contract are applicable in the option year. As used in this Stipulation and Settlement Agreement, the term "compensation", when relating to remuneration of a player, means money and any other rights or property that were received by and/or may be deemed to have accrued to the player under his Player Contract during the last year of the stated term.

(2) Option Clauses heretofore exercised by any NBA team are not subject to re-exercise.

(3) All Option Clauses in existing Player Contracts may not be exercised and shall be deemed deleted and eliminated immediately, except for the following:

(a) Option Clauses, which must be exercised by tendering a Player Contract on or before August 1, 1976, for the option year covering the 1976-1977 playing season; and

(b) Option Clauses which, as reflected by their written terms, have been the subject of specific negotiation on substantive matters (such as, without limitation, economic terms).

(4) For purposes of subparagraph (3)(b) above, an Option Clause shall be deemed to have been the subject of specific negotiation on substantive matters (such as, without limitation, economic terms) if, for example and without limitation:

(a) it expressly provides for compensation in excess of one hundred and one percent (101%) of the compensation payable with respect to the last year of the stated term of the Player Contract containing such a clause; or

(b) it appears separate and apart from Paragraph 22 of the Uniform Player Contract and expressly states that it has been specifically negotiated between a player and an NBA team.

(5) For purposes of subparagraph (3)(b) above, an Option Clause shall not have been the subject of specific negotiation on substantive matters (such as, without limitation, economic terms) solely because, for example and without limitation:

(a) it appears only in the form of the Uniform Player Contract then used in the NBA; and/or

(b) it recites that the player's agreement to the Option Clause was considered in determining the total compensation specified in his Player Contract; and/or

(c) it effects a change in the date specified in Paragraph 22 of the Uniform Player Contract by which a Player Contract must be tendered to a player for there to be a timely exercise of the option; and/or

(d) it defines or describes the amount of total compensation that must be paid to satisfy the requirement that a player receive for an option year no less than 100% of the compensation payable with respect to the last year of the stated term of his Player Contract, and/or the terms of payment thereof which may vary from the terms of payment of the last year of the stated term of his Player Contract.

(6) From the date hereof to the end of the 1986-1987 NBA playing season, Player Contracts entered into shall not contain any Option Clause except that:

(a) There may be an Option Clause in a Player Contract signed by a Rookie, but only if such contract has a stated term of not more than one year, subject to subparagraph (6)(b) below. Such Option Clause may authorize the extension of such contract for no more than one year beyond the stated term, may be exercisable only once, and shall provide that the compensation payable with respect to the option year shall be no less than 100% of the total compensation payable with respect to the stated one-year term of the contract and that all other non-monetary terms contained in such Player Contract shall be applicable in the option year. There may be used in the NBA a Uniform Player Contract for a Rookie whose contract has a stated term of one year, said contract to contain an Option Clause pursuant to the terms of this paragraph.

(b) There may be an Option Clause in (i) a Veteran's contract or (ii) a Rookie's contract which is for a stated term of more than one year, provided that such Option Clause is specifically negotiated between such Veteran or Rookie and an NBA team, authorizes the extension of such contract for no more than one year beyond the stated term,

is exercisable only once and provides that the compensation payable with respect to the option year is no less than 100% of the total compensation payable with respect to the last year of the stated term of such contract and that all other non-monetary terms applicable in the last year of the stated term of such contract shall be applicable in the option year. Any Player Contract for a Veteran or such a Rookie may contain an option in favor of the player. Other than the Uniform Player Contract to be used for a Rookie pursuant to subparagraph (6)(a) above, no Option Clause may appear in a Uniform Player Contract.

C. Compensation Rule

(1) Under the compensation rule currently applicable in the NBA when a Veteran Free Agent signs a Player Contract with an NBA team (hereinafter the "new team") other than the NBA team for which he had last previously played (hereinafter the "prior team"), if the new team and prior team are unable to agree upon the compensation to be paid to the prior team for the loss of such Veteran Free Agent, the Commissioner of the NBA, who has full, complete and final jurisdiction of any dispute involving the new team and the prior team, is authorized, but not required, to make an award of compensation to the prior team. The award by the Commissioner may take the form of assignment of Player Contract(s) and/or draft choice(s) and/or cash. Although the decision of whether to award compensation and, if so, what form of compensation is fair and equitable, lies in the sole discretion of the Commissioner, the purpose of the compensation rule described above is not to serve a penalty, but is to ensure that a team which loses such a player is, to the nearest

extent possible, made whole for the loss of such player.

(2) The current compensation rule described in paragraph C(1) above will remain in effect until the end of the 1980-1981 NBA playing season and there shall be no other compensation obligation, rule, practice, policy, regulation or agreement created or applied in the NBA during that period. During that period, a Veteran Free Agent may negotiate and sign a Player Contract with any NBA team and any NBA team may negotiate and sign a Player Contract with any Veteran Free Agent without any penalty or restriction subject only to the compensation rule described in paragraph C(1) above. No compensation obligation, rule, practice, policy, regulation or agreement shall apply to any Veteran Free Agent who seeks to negotiate or sign a player contract with or play with any team in any professional basketball league other than the NBA.

(3) For purposes of application of the compensation rule described above and for the Right of First Refusal described below in paragraph D:

(a) Playing services called for under any permissible option year must be rendered in order for a player to be deemed a Veteran Free Agent, provided, however, that a player and an NBA team may agree otherwise.

(b) A Veteran Free Agent shall be free to negotiate and sign a Player Contract with any NBA team and any NBA team shall be free to negotiate and sign a Player Contract with any Veteran Free Agent commencing on the day following the conclusion of all NBA playoff games in the last playing season covered by his Player Contract.

(4) No compensation obligation, rule, practice, policy, regulation or agreement shall apply to (a) the signing by an NBA team of any free agent other than a Veteran Free Agent, or (b) the signing (upon his return to the NBA) by an NBA team of a Veteran Free Agent who, having become a Veteran Free Agent after the date hereof, played in another professional basketball league for at least two playing seasons, or (c) the signing (upon his return to the NBA) by an NBA team of a Veteran Free Agent who became a Veteran Free Agent prior to the date hereof and, who, after becoming a Veteran Free Agent, played in another professional basketball league.

(5) Notwithstanding its expiration at the end of the 1980-1981 NBA playing season, the compensation rule set forth in paragraph C(1) above shall apply to any NBA player who (i) becomes a Veteran Free Agent commencing at the end of the 1979-1980 NBA playing season, (ii) chooses not to render playing services to an NBA team during the 1980-1981 playing season despite having received an offer of a Player Contract (without an Option Clause) for only that season which specifies compensation for the 1980-1981 playing season of 100% of the compensation payable to the player for the 1979-1980 NBA playing season and all other non-monetary terms contained in his Player Contract for the 1979-1980 NBA playing season and (iii) signs a Player Contract with another NBA team to commence with the 1981-1982 playing season. No right of first refusal shall be applicable to such Veteran Free Agent with respect to such transaction.

D. Right of First Refusal

(1) No compensation obligation, rule, practice,

policy, regulation or agreement of any kind shall be applicable to any Veteran Free Agent during the period from the day following the last NBA playoff game of the 1980-1981 playing season to the last day of the 1986-1987 playing season. During the aforesaid period, a Veteran Free Agent may negotiate and sign a Player Contract with any NBA team and any NBA team may negotiate and sign a Player Contract with any Veteran Free Agent without any penalty or restriction, subject only to the prior team's Right of First Refusal described below in the other subparagraphs of this paragraph D (or to the compensation rule in the situation described in paragraph C(5) above), and there shall be no other right of first refusal rule, practice, policy, regulation or agreement created or applied in the NBA during the aforesaid period.

(2) When a Veteran Free Agent receives an offer to sign a Player Contract from an NBA team (the new team) other than the prior team, which he desires to accept, he shall give to the prior team a completed certificate substantially in the form of Exhibit E (the "Offer Sheet"), signed by the Veteran Free Agent and the new team, which shall contain the "Principal Terms" (as defined below) of the new team's offer. The prior team, upon receipt of the Offer Sheet, may exercise its Right of First Refusal, which shall have the legal consequences hereinafter set forth below in this paragraph D(2).

(a) If, within fifteen (15) days from the date it receives an Offer Sheet, the prior team gives to the Veteran Free Agent a "First Refusal Exercise Notice" substantially in the form of Exhibit F, such Veteran Free Agent and the prior team shall be deemed to have entered

into a binding agreement, which they shall promptly formalize in a Player Contract, containing (i) all the Principal Terms (subject to subparagraph (6) below); (ii) those terms of the Uniform Player Contract not modified by the Principal Terms; and (iii) such additional terms, not less favorable to the Veteran Free Agent than those contained in the Offer Sheet, as may be agreed upon between the Veteran Free Agent and the prior team.

(b) If the prior team does not give the First Refusal Exercise Notice within the aforementioned fifteen (15) day period, the player and the new team shall be deemed to have entered into a binding agreement, which they shall promptly formalize in a Player Contract, containing (i) all the Principal Terms; (ii) those terms of the Uniform Player Contract not modified by the Principal Terms; and (iii) such additional terms, not less favorable to the Veteran Free Agent than those contained in the Offer Sheet, as may be agreed upon between the Veteran Free Agent and the new team (subject to the last sentence of subparagraph (11) below).

(c) There may be only one Offer Sheet signed both by an NBA team and a Veteran Free Agent outstanding at any one time. An Offer Sheet, before it is given to the prior team, may be revoked or withdrawn only upon the written consent of the new team and the Veteran Free Agent. An Offer Sheet, after it has been given to the prior team, may be revoked or withdrawn only upon the written consent of the prior team, the new team and the Veteran Free Agent. In either of such events, a Veteran Free Agent shall again be free to negotiate and sign a Player Contract with any NBA team, and any NBA team shall again be free to negotiate

and sign a Player Contract with such Veteran Free Agent, subject only to the prior team's renewed Right of First Refusal.

(3) For purposes of this paragraph D, the Principal Terms shall include, without limitation, the matters covered by subparagraphs (a)-(e) below:

(a) the money the new team will pay (and lend, on described terms) to the Veteran Free Agent and/or his designees (currently and/or as deferred compensation in specified installments on specified dates) in consideration for his services as a basketball player under the Player Contract ("Money") and the security therefor, if any, and if the amount of Money is variable and/or is subject to calculation, a description of the variation and the method of calculation;

(b) a description of property other than Money which the new team will pay, provide or make available to the Veteran Free Agent and/or his designees in consideration of his services as a basketball player under the Player Contract ("Property");

(c) a description of investment opportunities (including financing terms thereof, if any) which the new team will provide or make available to the Veteran Free Agent and/or his designees ("Investments");

(d) modifications of and additions to the terms contained in the Uniform Player Contract requested by the Veteran Free Agent and acceptable to the new team, which relate to non-compensation terms of the Veteran Free Agent's employment as a basketball player (which shall be evidenced either by a copy of the Uniform Player Contract, marked to show changes, or by a brief written summary contained

on or attached to the Offer Sheet);

(e) Money, Property and Investments the new team will pay, provide or make available to the Veteran Free Agent and/or his designees, in consideration for described services by him or others, other than as a basketball player.

(4) If any item of Property or Investments of the Principal Terms contained in an Offer Sheet is such that its fair market value cannot readily be estimated by the prior team, the Veteran Free Agent and/or the new team shall commence an arbitration (the "Valuation Arbitration"), pursuant to the expedited arbitration procedure and before the arbitrator described in subparagraph (7) below, before the Veteran Free Agent gives the Offer Sheet to the prior team. The prior team and the NBA shall not be entitled to notice of or to participate in the Valuation Arbitration. The arbitrator in such Valuation Arbitration shall make an independent determination in writing only as to the fair market value of such items. In arriving at his determination, the arbitrator shall consider relevant information (including appraisals and estimates) furnished to him by the new team and/or the Veteran Free Agent and, if he deems it necessary, may obtain (consistent with the expedited procedure) appraisals or opinions as to fair market value by independent persons qualified to render the same. It shall not be inconsistent with the expedited procedure for the arbitrator in his reasonable discretion to adjourn for a short period of time a hearing for the purpose of obtaining such appraisals or opinions. The arbitrator's determination shall be final and binding on the new team, the prior team and the Veteran

free Agent only for purposes of the Right of First Refusal, and a copy of the determination in any such Valuation Arbitration shall be attached to the Offer Sheet given to the prior team.

(5) Along with the descriptions of the Property and Investments and the copy of the determination in the Valuation Arbitration, if any, the Offer Sheet shall include or have attached, in written form, all material statements and information furnished (orally or in writing) by the new team to the Veteran Free Agent or his representative about such items of Property and Investments which would be relevant to the prior team's evaluation of the new team's offer other than the new team's estimates and opinions, if any, of the value of such items.

(6) If the prior team gives a First Refusal Exercise Notice, the Player Contract created thereby shall be deemed to contain the following additional provisions:

(a) The prior team shall not be obligated to pay, provide or make available to the Veteran Free Agent and/or his designees, in kind, any terms within the Principal Terms which are unique or otherwise cannot be obtained or duplicated by the prior team without unreasonable effort or expense ("Unique Terms");

(b) The prior team shall be obligated to pay, provide or make available to the Veteran Free Agent and/or his designees, and the Veteran Free Agent shall be obligated to accept, in substitution for Unique Terms, substantially equivalent terms or, if substantially equivalent terms cannot be obtained by the prior team without

unreasonable effort or expense, cash equal to the fair market value of the Unique Terms, in either case payable to the Veteran Free Agent and/or his designees at the same or approximately the same time as would have been payable by the new team pursuant to the Offer Sheet. The prior team shall not be obligated to pay, provide or make available to the Veteran Free Agent and/or his designees substantial equivalents of (i) intangible benefits or advantages that might accrue to the Veteran Free Agent as a consequence of living and playing in the geographic area of the new team or (ii) promises by the new team of a try-out, audition or introduction for the possibility of performing services or earning income other than as a basketball player. Within ten (10) days following its giving of a First Refusal Exercise Notice, the prior team shall give the Veteran Free Agent written notice of the items, if any, it deems to be Unique Terms and the substantially equivalent terms it proposes to pay, provide or make available in substitution for such Unique Terms and/or the amount of cash equal to the fair market value of the Unique Terms it proposes to pay, provide or make available in substitution for substantially equivalent terms. If such written notice is not so given, the prior team shall have waived any right it may have to contend that the Principal Terms contain any Unique Terms.

(7) The expedited arbitration procedure as provided for under the collective bargaining agreement between the NBA and the Players Association then in force (or if no such procedure is then in force, the expedited procedure contained in the last prior collective bar-

gaining agreement containing such procedure) shall be the exclusive method for resolving the disputes set forth in this subparagraph (7), and the question set forth in subparagraph (4) above, by the arbitrator designated thereunder, whose decision shall be final and binding upon all parties thereto:

(a) A dispute between a Veteran Free Agent and a prior team as to whether a term within the Principal Terms is a Unique Term and/or any dispute as to any matter referred to in subparagraph (6)(b) above.

The arbitrator shall not have the power to terminate the binding agreement between the Veteran Free Agent and the prior team, but the arbitrator shall have the power only to direct the prior team to pay, provide or make available to the Veteran Free Agent and/or his designees either (i) the term in dispute, in kind, if the arbitrator rules that such term is not a Unique Term; or (ii) a substantially equivalent term determined by the arbitrator, in substitution for a Unique Term; or (iii) if the arbitrator rules that substantially equivalent terms cannot be obtained by the prior team without unreasonable effort or expense, cash equal to the fair market value of the Unique Term as valued in the Valuation Arbitration or, if not so valued, then as determined in the arbitration hereunder.

(b) A dispute between the player and either the prior team or the new team, as the case may be, relating to their respective obligations to formalize their binding agreements created under subparagraphs (2)(a) or (2)(b) above, or as to whether the binding agreement is between the Veteran Free Agent and the new team or the Veteran Free Agent and the prior team.

The arbitrator shall not have the power to terminate any such binding agreement, but he shall have the power only to direct the parties to formalize such binding agreement into a Player Contract in accordance with the terms of such subparagraphs, as interpreted by the arbitrator.

(c) A dispute initiated by the prior team as to whether a Valuation Arbitration should have been commenced as to any item of Property or Investments prior to the giving of the Offer Sheet to the prior team.

If the arbitrator finds that the Valuation Arbitration should have been commenced by the new team and/or the Veteran Free Agent, he shall make a determination in writing of the fair market value of such items and shall extend the fifteen (15) day period referred to in subparagraph (2)(a) above to ten (10) days after he notifies the prior team of his determination of the fair market value of such items, which notification shall promptly be given. If the arbitrator finds that the Valuation Arbitration need not have been commenced, the prior team shall in no event be entitled to any extension of said fifteen (15) day period, regardless of when the arbitrator makes such finding. Any arbitration pursuant to this subparagraph (7)(c) must be commenced by the prior team within seven (7) days of its receipt of the Offer Sheet.

(8) A Veteran Free Agent shall have no less than 165 days from the last playoff game of the preceding playing season to give an Offer Sheet to the prior team. However, notwithstanding any other provision of this paragraph D, a Veteran Free Agent shall not be entitled to give an Offer Sheet to the prior team during the 200 day period commencing

with the 166th day after the last NBA playoff game of the preceding playing season if all of the following conditions have been met by the prior team:

(a) the prior team tendered a Player Contract to such Veteran Free Agent on or before the 150th day after the last playoff game of the preceding playing season with the condition that it could be accepted by the Veteran Free Agent up to and including the 165th day after such last playoff game of the preceding playing season; and

(b) such Player Contract had a stated term of only the next playing season (whether or not the next playing season already commenced prior to the tender); and

(c) the compensation stated to be payable in the tendered Player Contract was no less than 100% of the compensation payable to the Veteran Free Agent with respect to the last playing season in which he played, to be reduced, if applicable, pro rata to reflect the number of regular season games played by the team prior to acceptance, if any, by the Veteran Free Agent of such Player Contract; and

(d) the tendered Player Contract contained all other non-monetary terms contained in the Veteran Free Agent's contract for the last playing season in which he played.

If all of such conditions were met by the prior team and if the Veteran Free Agent does not accept the prior team's

tendered Player Contract by the 165th day after the last playoff game of the preceding playing season, the Veteran Free Agent shall not play for any other NBA team during that season but shall be free to negotiate and sign a Player Contract with any NBA team commencing with the next succeeding season, without any penalty or restriction, subject only to the prior team's renewed Right of First Refusal, including the provisions of this subparagraph (8).

(9) (a) Unless otherwise specifically negotiated by a Veteran Free Agent, no right of first refusal rule, practice, policy, regulation or agreement shall apply to the signing of a player contract with or the playing with any team in any professional basketball league other than the NBA by any Veteran Free Agent.

(b) No right of first refusal, rule, practice, policy, regulation or agreement shall apply to (i) the signing by an NBA team of any free agent other than a Veteran Free Agent or (ii) the signing (upon his return to the NBA) by an NBA team of a Veteran Free Agent who, after becoming a Veteran Free Agent, played in another professional basketball league for at least two playing seasons.

(10) Within ten (10) days after the giving of an Offer Sheet to the prior team, the Veteran Free Agent shall cause a copy thereof to be given to the NBA, and within ten (10) days after the giving of a First Refusal Exercise Notice to the Veteran Free Agent, the prior team shall cause a copy thereof to be given to the NBA. At anytime after the giving of an Offer Sheet to a prior team, the NBA may require the new team to cause a copy thereof

to be given to the NBA. Subject to paragraph 5(b) below, the NBA shall have the right to prepare and circulate to all NBA teams a list containing no more than the names of all players who shall become Veteran Free Agents as of the day following the last playoff game of that NBA playing season ("Veteran Free Agent List"), and no other list relating to Veteran Free Agents. A Veteran Free Agent List may so be circulated, but without any further explanation, between April 1 and May 1 of each year covered by this Stipulation and Settlement Agreement up to and including 1987. If a Veteran Free Agent List is so circulated, a copy thereof shall be sent to Class Counsel and the Players Association.

(11) If, in an enforcement proceeding pursuant to paragraph 8 below, the Special Master finds that, for the purpose of defeating the prior team's Right of First Refusal, the Offer Sheet given to the prior team contained Principal Terms more favorable in material respects than the terms upon which the Veteran Free Agent had agreed to play for and accepted from the new team, he shall, if the prior team so desires and in addition to any other relief he may grant, be empowered to direct that the Veteran Free Agent must return to the prior team under the terms accepted by the Veteran Free Agent from the new team. However, if the Special Master finds that the acceptance by the player from the new team of terms less favorable than those listed on the Offer Sheet was not made by the player for the purpose of defeating the prior team's Right of First Refusal, but was part of an attempt by the new team to defeat the prior team's Right of First Refusal, the Special Master shall be empowered

to order the new team to provide or make available to the Veteran Free Agent the difference between the compensation set forth in the Offer Sheet and the compensation actually paid or contracted to be paid to the Veteran Free Agent. Nothing contained in this subparagraph shall prevent the Commissioner of the NBA from assessing against a new team against which such finding by the Special Master is made a penalty of up to $250,000 or the differential between the compensation set forth in the Offer Sheet and the compensation actually paid or contracted to be paid to the Veteran Free Agent, whichever sum is larger. Notwithstanding any other provision of this paragraph D, in the event the prior team does not give the Veteran Free Agent a First Refusal Exercise Notice, the new team and the Veteran Free Agent shall not, for a period of one year from the date of the Offer Sheet, change any item dealing with compensation to the Veteran Free Agent in the Player Contract between the new team and the Veteran Free Agent, except that during such period the new team shall be permitted to make and the Veteran Free Agent shall be permitted to accept an increase in cash compensation, so long as such increase does not otherwise affect the amount or terms of payment of the compensation called for in such Player Contract.

(12) Any Offer Sheet, First Refusal Exercise Notice or other writing required or permitted to be given under this paragraph D shall be either by hand delivery or by prepaid certified or registered mail addressed as follows:

To any NBA team: addressed to that team at the principal address of such team as then listed on the records of the NBA or at that team's principal office, to the attention of the team's general manager;

To the NBA: as set forth in paragraph 12 of this Stipulation and Settlement Agreement;

To a Veteran Free Agent: to his address listed on the Offer Sheet and, if the Veteran Free Agent designates a representative on the Offer Sheet and lists such representative's address thereon, a copy shall be sent to such representative at such address.

An Offer Sheet shall be deemed given only when actually received by the prior team. A First Refusal Exercise Notice shall be deemed given when sent by the prior team. Other writings required or permitted to be given under this paragraph D shall be deemed given only when actually received by the party to whom addressed.

3. Settlement Fund

(a) The Settling Defendants other than the NBA shall pay to the Class Members the aggregate amount of $4,300,000 (hereinafter the "Settlement Fund") in the amounts, at the times and in the installments and manner hereinafter set forth. The Settlement Fund shall be distributed among the Class Members, under the direction of the Players Association (the "Receiving Agent") in accordance with the Plan of Distribution, annexed hereto as Exhibit L, to be filed with the Court for its approval. Neither the Settling Defendants nor their representatives have taken part in determining any allocation of the Settlement Fund among the Class Members and all funds

deposited therein shall, subject only to the terms of paragraph 3(d) below, be the property of the Class Members upon deposit.

(b) The Settlement Fund shall be payable in eight equal annual installments of $537,500 each (without interest, except as set forth in subparagraph (j) below). The first installment shall be paid ten (10) days from the date hereof, and each of the remaining seven installments shall be paid on or before April 15 of each succeeding year through and including April 15, 1983. Each Settling Defendant other than the NBA shall be severally (but not jointly) liable to the Class Members for 1/18 of the aggregate Settlement Fund (i.e., $238,888.88) and 1/18 of each of such eight annual installments (i.e., $29,861.11).

(c) Promptly after this Stipulation and Settlement Agreement is signed, the NBA shall cause to be opened a demand deposit checking account at a bank in New York City, jointly selected by the NBA and Class Counsel, which account shall be entitled "Account for the Sole and Exclusive Benefit of Class Members Under the Stipulation and Settlement Agreement dated April 29, 1976" (the "Payment Account"). The Receiving Agent shall have sole authority to withdraw funds from and write checks on such account and otherwise issue instructions to such bank with respect to such account.

(d) The first installment of the Settlement Fund ($537,500, payable ten (10) days from the date hereof) and other installments, if any, which thereafter become due prior to the Closing Date, shall be paid into an Escrow Account to be opened at the bank at which the Payment Account is opened. Such bank, as Escrow Agent, shall enter into an Escrow Agreement with the NBA and Class Counsel (on behalf of the Class Members), providing as follows:

(i) on the Closing Date the Escrow Agent shall transfer to the Payment Account the amount of all installments theretofore paid into the Escrow Account, in which event any interest theretofore earned on the funds in the Escrow Account shall be applied first to any costs under the Escrow Agreement, next applied in payment of the costs and fees referred to under subparagraph 3(i) below, and next paid over to the NBA;

(ii) alternatively, in the event that this Stipulation and Settlement Agreement does not receive Court Approval or if, following Court Approval, the judgment entered thereupon is vacated, reversed or modified, the Escrow Agent shall,if directed by the NBA, pay to the NBA all installments theretofore paid into the Escrow Account, plus any interest thereon.

(e) The NBA, acting on behalf and for the account of the Settling Defendants other than itself, shall cause payments of each of the seven subsequent annual installments of $537,500 to be made out of revenues to be payable to it from any network television contract which is in effect while any part of the Settlement Fund remains unpaid and which covers the telecast of NBA games ("T.V. Revenues"). The NBA agrees, to effectuate the purposes of the preceding sentence, to insert into each such network television contract, and continue in effect (i) a requirement that all T.V. Revenues up to $537,500 shall be payable on or before April 15 in each year; and (ii) a requirement that such television network shall pay all T.V. Revenues up to $537,500 in each year by means of a direct payment by the network to the Payment Account or Escrow Account as the case may be. The NBA will exhibit to Class Counsel true and complete copies

of all such television network contracts (including amendments thereto), with the understanding that Class Counsel will review such contracts solely for the purpose of satisfying itself as to compliance by the NBA with the matters set forth in this subparagraph (e) and will otherwise keep confidential the provisions of such contracts. The Settling Defendants agree that in all such network television contracts to be entered into covering any period during which any part of the Settlement Fund remains unpaid, the NBA shall be entitled to receive at least $537,500 of the T.V. Revenues thereunder in each year on or before April 15. If at any time the NBA has a network television contract in effect with more than one television network covering the telecast of NBA games during the same season (including playoffs) and if the NBA has inserted the requirements of (i) and (ii) of this subparagraph (e) in a contract with American Broadcasting Company, Columbia Broadcasting System or National Broadcasting Company (the "major contract"), the requirements inserted in such other contracts may provide that such other networks shall make payments to the Payment Account or Escrow Account as the case may be, only to the extent not paid pursuant to the major contract.

(f) If all or any portion of any annual installment of the Settlement Fund is not paid out of T.V. Revenues as aforesaid, then:

(i) Each Settling Defendant other than the NBA shall transmit its share of any unpaid installment of the Settlement Fund ("Unpaid Share") to the NBA, in trust for the sole and exclusive benefit of the Class Members, no later than April 5 of each year. The NBA shall deposit

such funds when received by it directly into the Payment Account or Escrow Account as the case may be; and

(ii) If any such Settling Defendant shall fail to transmit to the NBA all or any part of its Unpaid Share, the NBA shall notify the Receiving Agent and Class Counsel of that fact in writing by April 10 of each year; and

(iii) On behalf of and for the benefit of any such Settling Defendant ("Defaulting NBA Member"), the NBA agrees to remit to the Payment Account or Escrow Account as the case may be on account of payment of such Defaulting NBA Member's Unpaid Share, any funds in the possession of the NBA which, at such time or thereafter, are payable by the NBA to such Defaulting NBA Member after deducting therefrom any amounts owing to the NBA by such Defaulting NBA Member for contributions to capital pursuant to Paragraphs 31 and 32 of the NBA Constitution and for playoff payments pursuant to Paragraph 33(a), (b) and (c) of the NBA Constitution.

(g) No current NBA member shall be liable for any Unpaid Share of any Defaulting NBA Member. However, any new teams which become NBA members by any means other than by succession and assumption of liability of a Settling Defendant after the Closing Date ("New Members") shall be severally liable to the Class Members for a pro rata portion (based on the number of such New Members) of all Unpaid Shares; provided, however, that the several liability of each New Member shall not exceed the amount of several liability under subparagraph (a) above of each Settling Defendant. Nothing contained in the preceding sentence shall be deemed to deprive the Class Members of any rights they may have against any New Member on the ground it is

a successor to a Defaulting NBA Member, nor reduce any liability or other obligation with respect to the Settlement Fund which the NBA may require to be assumed by a team seeking to become a New Member.

(h) The NBA shall notify the Receiving Agent within two (2) days after the annual installment of the Settlement Fund has been deposited in the Payment Account or Escrow Account as the case may be. The Receiving Agent shall cause the installment of the Settlement Fund to be distributed to the Class Members in accordance with the Plan of Distribution referred to in subparagraph (a) above. In making all payments of the Settlement Fund, the Settling Defendants shall not, for any reason whatsoever, make any deduction, offset, reduction or diminution in the amount of the Settlement Fund. The liability of the Settling Defendants with respect to each installment of the Settlement Fund (but not any liability under subparagraphs (i), (j) and (k) below) shall be deemed discharged when the full amount of each installment is deposited into the Payment Account (which shall be under the sole control of the Receiving Agent) or Escrow Account as the case may be and the Settling Defendants shall have no responsibilities to the Class Members with respect to the distribution of the Settlement Fund among the Class Members.

(i) The Receiving Agent shall direct the bank at which the Payment Account is maintained to act as disbursing agent for the purpose of preparing and mailing checks to each Class Member for his respective share of the Settlement Fund, and to discharge related ministerial functions such as the reissuance of lost or stale checks. The Settling Defendants shall pay all the costs and fees

(including postage charges) of the Bank for its services as disbursing agent and Escrow Agent.

(j) No interest shall be payable by the Settling Defendants with respect to any installments of the Settlement Fund paid into the Payment Account or Escrow Account as the case may be on the due date thereof or within ten (10) days thereafter. However, installments not paid within such ten day period shall bear interest from the date on which such payment was due to the actual date of payment, on the unpaid amount of such installment, at a rate equal to the maximum rate of interest then permitted by law in the State of New York.

(k) If any Class Member or the Receiving Agent brings any proceeding against any of the Settling Defendants for collection of any share of the Settlement Fund not paid within the ten day period referred to above, then, such Class Member or the Receiving Agent shall be entitled to receive from such Settling Defendant(s), in addition to any interest that may be found to be due pursuant to subparagraph (j) above, the reasonable attorneys' fees, costs and expenses incurred in such proceeding, unless it is determined that such Class Member or the Receiving Agent is entitled to no recovery on its claim in such proceeding.

(l) Any dispute, controversy or question relating to the distribution of any portion of the Settlement Fund (including undeliverable checks), which the Receiving Agent is not otherwise able to resolve, shall be resolved in such manner as the Special Master shall determine (including any temporary investments which he deems appropriate); provided, however, that no such resolution shall increase

the Settlement Fund beyond the aggregate amount set forth in subparagraph (a) above or impose any added costs or expenses on any of the Settling Defendants and that no such portion shall revert to any Settling Defendant.

(m) The NBA has made certain agreements in this paragraph 3 which will aid the Class Members in obtaining payment of the Settlement Fund. Should the NBA breach any of such agreements the Class Members could be damaged in an amount up to $537,500 plus any amounts under subparagraph (i), (j) and (k) above with respect to each unpaid installment of the Settlement Fund. In order to secure its obligation to perform such agreements and to enable the Class Members to collect damages they might suffer if such agreements are breached and to secure the payment of such damages, the NBA hereby grants, assigns and transfers to the Receiving Agent for the benefit of the Class Members a security interest in and to all present and future rights (and all proceeds of such rights) of the NBA to receive $537,500 per annum of T.V. Revenues under any present or future network television contracts entered into by the NBA (the "Security"). Such security interest shall terminate (i) upon full payment of the Settlement Fund into the Payment Account or Escrow Account as the case may be or (ii) if this Stipulation and Settlement Agreement does not receive Court Approval, or if, following Court Approval, the judgment entered thereupon is vacated, reversed or modified. When the security interest terminates, the Receiving Agent, on behalf of the Class Members, shall execute and deliver to the NBA termination statements under the Uniform Commercial Code and/or other writings required or necessary in the reasonable judgment of

counsel to the NBA to terminate all record notice of such security interest.

(n) In the event any annual installment of the Settlement Fund is not paid within ten (10) days of the date due, the Class Members, in addition to other rights and remedies provided by law or equity, shall be entitled to exercise all of the rights and remedies provided to a secured party under the Uniform Commercial Code of the State of New York. If the Class Members exercise such rights as a secured party, the NBA shall not be liable for any deficiency resulting from such exercise; however, the Class Members shall still have the right to proceed directly against Defaulting NBA Members to collect Unpaid Shares and against the NBA for breach of any of its obligations under this paragraph 3.

(o) Simultaneously with the execution of this Stipulation and Settlement Agreement, the NBA is executing a financing statement in the form annexed hereto as Exhibit G. The NBA agrees to execute and deliver any further documents, including financing and continuation statements and amendments contemplated by the Uniform Commercial Code, required or necessary in the reasonable judgment of Class Counsel, to implement and effectuate the grant and perfection of the security interest hereunder.

(p) The NBA hereby represents and warrants that it has not granted any currently existing security interest in the Security other than the security interest granted to the Class Members hereunder.

(q) The Class Members shall, by virtue of this Stipulation and Settlement Agreement and the Final Consent Judgment referred to below, be, in addition to holders of a security interest as set forth herein, judgment creditors

of the Settling Defendants as of the date of entry of the Final Consent Judgment. Neither this Stipulation and Settlement Agreement nor the Final Consent Judgment shall be filed, recorded or docketed in any court (other than the United States District Court, Southern District of New York), agency, public office or other place where creditors might file, record or docket judgments, unless there has been a default in payment of any installment of the Settlement Fund or a network television contract containing the requirements set forth in subparagraph (e) above is not in effect.

4. Attorneys Fees, Costs and Disbursements

(a) Subject to approval by the Court, the Settling Defendants shall, in the manner and at the times hereinafter set forth, pay 100% of the attorneys' fees, costs and disbursements which have been incurred by and on behalf of the Class Members in connection with the issues raised in the Class Action from 1970 through the Closing Date. It is understood and agreed that, while the benefits derived by the Class Members by reason of both the Class Action and this Stipulation and Settlement Agreement, might, under rules applicable to fee awards in such actions, provide a basis for a higher fee award, Class Counsel will not apply for any such higher fee award based upon a percentage of such total benefits or otherwise. Instead, Class Counsel's application for a fee award shall be limited to standard hourly rates as set forth below and the Settlement Fund of $4,300,000 shall not be reduced or diminished by the payment to Class Counsel of any attorneys' fees, costs and disbursements.

(b) Class Counsel shall apply to the Court in

the Class Action, and the Settling Defendants shall not oppose, an award of attorneys' fees, costs and disbursements in the amounts set forth below.

(i) attorneys' fees of Class Counsel on an hourly basis (according to the standard hourly rates charged by Class Counsel) through April 15, 1976 which application shall be for a fee of $788,951.31, plus the costs and disbursements actually incurred for and on behalf of the Class Members, through March 31, 1976, in the amount of $122,701.05; and

(ii) attorneys' fees of Class Counsel on an hourly basis (according to the standard hourly rates charged by Class Counsel) for services rendered by Class Counsel in connection with the effectuation of this Stipulation and Settlement Agreement from April 16, 1976 through the Closing Date, plus the costs and disbursements actually incurred for and on behalf of the Class Members in connection therewith from April 1, 1976 through the Closing Date; and

(iii) attorneys' fees, costs and disbursements of Clifford, Warnke, Glass, McIlwain & Finney, actually paid to that firm on behalf of the Class Members in the amount of $41,021.77.

(c) The attorneys' fees, costs and disbursements calculated pursuant to subparagraph (b) above, shall be paid by the NBA to Class Counsel as follows:

(i) (a) Ten days from the the date hereof - $200,000;

(b) On November 10, 1976 - $400,000;

(c) On January 10, 1977 - $300,000;

(d) On April 11, 1977 - an amount equal to the difference between the total of fees, costs and disbursements referred to in subparagraphs (b)(i) and (b)(iii) above and $900,000;

(e) Also on April 11, 1977 - the amount calculated pursuant to subparagraph (b)(ii) above for which the NBA has received verification from Class Counsel ("Post Stipulation Fees and Costs"), up to an amount equal to the difference between $200,000 and the amount calculated pursuant to subparagraph (i)(d) immediately above.

(f) On July 10, 1977 - the balance, if any, of Post Stipulation Fees and Costs, and

(g) Thereafter, within ten (10) days after each further verification is received by the NBA from Class Counsel, the balance if any, of Post Stipulation Fees and Costs.

(ii) The $200,000 payable under subparagraph (c)(i)(a) above and any other payment specified in subparagraph (c)(i) above that falls due prior to the Closing Date, shall be paid by the NBA to Class Counsel to be held in escrow by Class Counsel, pursuant to the following escrow agreement: all funds held in escrow by Class Counsel, shall be paid over to the NBA in the event that this Stipulation and Settlement Agreement does not receive Court Approval or if, following Court Approval, the judgment entered thereupon is vacated, reversed or modified. If this Stipulation and Settlement Agreement does receive Court Approval, and the Closing Date occurs, all funds held in escrow by Class Counsel shall be released to Class Counsel. If the Closing Date has occurred on or prior to the date that any payment

specified in subparagraph (c)(i) above is due, the NBA shall make such payment directly to Class Counsel.

5. Undertakings

(a) From the date of this Stipulation and Settlement Agreement until the last day of the 1986-1987 NBA playing season, no NBA member, alone or by reason of any express or implied agreement or understanding, shall fail or refuse to negotiate with, or enter into a Player Contract with, any NBA player who is free to negotiate and sign a Player Contract with any NBA team, on any of the following grounds:

(i) the player has previously been subject to the exclusive negotiating rights obtained by another NBA member in a College Draft; or

(ii) the player has previously been subject to the option of another NBA team; or

(iii) the player has previously refused or failed to enter into a Player Contract containing an Option Clause; or

(iv) the player has become a Veteran Free Agent; or

(v) the player is or has been subject to the Right of First Refusal described in paragraph 2.D above.

(b) From the last day of the 1980-1981 NBA playing season until the last day of the 1986-1987 NBA playing season, no NBA member shall directly or indirectly communicate or disclose to any other NBA member or to the NBA (other than as provided in paragraph 2.D (10) above) that it has negotiated with or is negotiating with any

Veteran Free Agent who is subject to the Right of First Refusal unless and until an Offer Sheet shall have been given to the prior team.

(c) From the last day of the 1980-1981 NBA playing season until the last day of the 1986-1987 NBA playing season,

(i) no NBA member shall make an offer to a Veteran Free Agent subject to the Right of First Refusal which includes any Principal Terms which are (a) designed to serve the purpose of defeating the prior team's ability to evaluate and meet the new team's offer, and (b) not intended to be bona fide terms offered by the new team to the Veteran Free Agent; and

(ii) no NBA player who has become a Veteran Free Agent subject to the Right of First Refusal shall induce any new team or cause any new team to be induced to make an offer which violates the undertaking in subparagraph (i) immediately above.

(d) The present College Draft, Option Clause, and compensation rule, as described in paragraphs 2.A(1), 2.B(1) and 2.C(1), shall not at any time in the future be reinstituted, implemented or proposed by the NBA or any NBA team for use in the NBA.

(e) Nothing contained in subparagraphs (a), (b) or (c) above shall be deemed to govern the rights of the parties following the 1986-1987 NBA playing season, so as either to permit or prohibit the practices referred to therein.

6. Further Matters

(a) In addition to their inclusion in this Stipulation and Settlement Agreement, the matters referred to

in paragraphs 2 and 5(d) above and this paragraph 6 are, simultaneously herewith, being included in a collective bargaining agreement between the NBA and the Players Association.

(b) Neither the settlement of the Class Action, nor entry into this Stipulation and Settlement Agreement or any collective bargaining agreement or any Player Contract, nor the effectuation thereof, nor any practice or course of dealing thereunder shall be deemed to be a waiver or estoppel by any NBA player or players or the Players Association of their right to contend (subject to the right of the NBA to contend otherwise) that any type of NBA college draft, option clause, compensation rule, right of first refusal or any practice dealing with allocation of players or players' negotiating rights following the completion of the stated term of any Player Contract is not a mandatory subject of collective bargaining or a subject over which they are otherwise required to collectively bargain, nor do they concede that any of the same are mandatory subjects of collective bargaining or subjects over which they are otherwise required to collectively bargain.

(c) Neither the settlement of the Class Action, nor entry into this Stipulation and Settlement Agreement or any collective bargaining agreement or any Player Contract, nor the effectuation thereof, nor any practice or course of dealing thereunder shall be deemed to be a waiver or estoppel by any NBA player or players or the Players Association of their right to contend (subject to the right of the NBA to contend otherwise) that there is no validity to or propriety of or relating to either the unfair labor practice charge filed by the NBA against the Players Associa

tion on July 10, 1975 or any complaint that may issue from the National Labor Relations Board ("NLRB") thereupon, or that any matter or area covered by such charge or complaint is not a mandatory subject of collective bargaining or a subject over which they are otherwise required to collectively bargain, nor do they concede that such charge or complaint has any validity or propriety or that such matter or area is a mandatory subject of collective bargaining or a subject over which they are otherwise required to collectively bargain. If notification has not sooner occurred, the NBA agrees promptly on the issuance of any such NLRB complaint that may issue after the Closing Date to withdraw said unfair labor practice charge as being moot.

(d) Neither the settlement of the Class Action, nor entry into this Stipulation and Settlement Agreement or any collective bargaining agreement or any Player Contract, nor the effectuation thereof, nor any practice or course of dealing thereunder shall be deemed to be a waiver or estoppel by any NBA player or players or the Players Association of their right to challenge in a court of competent jurisdiction any future unilateral imposition by the NBA or any NBA member of any rule, regulation, policy, practice or agreement, or to contend (subject to the right of the NBA to contend otherwise) that the same is not a mandatory subject of collective bargaining or a subject over which they are otherwise required to collectively bargain, nor do they concede that the same is a mandatory subject of collective bargaining or a subject over which they are otherwise required to collectively bargain.

7. Covenants Not To Sue

(a) The Class Members, on behalf of themselves and their respective heirs, successors and assigns, hereby covenant not to sue any of the Settling Defendants or Madison Square Garden Corporation, their agents, successors or assigns, with respect to any claim relating to or arising out of the claims set forth in the Complaint, including, without limitation, the present NBA rules, practices and regulations relating to the College Draft, the Option Clause, the compensation rule, the trading of players, tampering, maintenance of certain lists, maintenance of a Uniform Player Contract, and the sharing of salary information, provided, however, that nothing contained in this paragraph 7(a) shall prevent a Class Member from asserting that any Settling Defendant has breached the terms of this Stipulation and Settlement Agreement or of any Player Contract or from challenging any matter referred to in paragraph 6(d) above or shall affect the provisions of paragraph 5(d) above.

(b) Subject to the terms of this Stipulation and Settlement Agreement, the Settling Defendants covenant not to sue or seek any relief against any Class Member, his heirs or agents with respect to any claim in the Class Action.

(c) In the event that any person, whether or not a party hereto, has asserted or will assert a claim against the Settling Defendants or the Class Members which arises out of or relates to any matter contained in this Stipulation and Settlement Agreement or in the Class Action, no party hereto will assert any cross-claim against or seek to implead, or seek indemnification from, the other with respect to such claim.

8. Final Consent Judgment and Special Master

(a) Upon Court Approval of this Stipulation and Settlement Agreement, a Final Consent Judgment shall be entered in the form annexed hereto as Exhibit H, pursuant to which the Court shall retain jurisdiction over the Settling Defendants and the Class Members and the Class Action to enforce the terms of this Stipulation and Settlement Agreement and the Final Consent Judgment. The Court shall appoint a Special Master agreed upon and recommended by the parties, who shall have exclusive jurisdiction to enforce the terms of this Stipulation and Settlement Agreement (including, without limitation, any dispute arising under paragraph 2.B (3), (4) and (5)) and the Final Consent Judgment, and who shall hold hearings on alleged violations thereof, subject to review by the Court in the manner set forth below.

(b) Any new NBA member, whether as a new franchise or as successor of a current NBA member or otherwise, shall become bound by the Final Consent Judgment.

(c) The powers of the Court and the Special Master and the rights of the parties in any enforcement proceeding shall be as set forth in Federal Rules of Civil Procedure 53(a), (c), (d) and (e); provided, however, that:

(i) The Special Master shall make findings of fact and recommendations of relief including, without limitation, contempt and specific performance;

(ii) The Court shall accept the Special Master's findings of fact unless clearly erroneous and the Special Master's recommendations of relief unless based upon clearly erroneous findings of fact, incorrect application of the law or abuse of discretion;

(iii) Subject to subparagraphs (c)(i) and (c)

(ii) above, the Court shall determine all points of law and finally make the award of all relief including, without limitation, contempt and specific performance.

(d) The compensation to and costs of the Special Master in any enforcement proceeding brought by or on behalf of any NBA player or players alleging a violation of this Stipulation and Settlement Agreement or the Final Consent Judgment shall be borne by the Settling Defendants, unless in such enforcement proceeding an NBA player or players are awarded no relief, in which case such compensation and costs of the Special Master shall be borne by the NBA player or players initiating the enforcement proceeding. In any enforcement proceeding permitted to be brought by an NBA Member against a player alleging a violation of this Stipulation and Settlement Agreement, such compensation and costs shall be borne by the player only if relief is awarded against the player, and if no such relief is awarded, the NBA Member Defendant shall bear such costs. In no event, except for enforcement proceedings referred to in paragraph 3(k) above, shall any party be liable for the attorneys' fees incurred in any such enforcement proceeding by any other party.

(e) All matters in enforcement proceedings before the Special Master shall be heard and determined in an expedited manner. An enforcement proceeding may be commenced upon 72 hours' written notice (or upon shorter notice if ordered by the Special Master) served upon the party against whom the enforcement proceeding is brought and filed with the Special Master. All such notices and all orders and notices issued and directed by the Special Master shall be served upon the NBA, counsel for the NBA, the Players Association

and Class Counsel, in addition to any counsel appearing for individual NBA players or individual NBA teams. The Players Association and the NBA shall have the right to participate in all such enforcement proceedings, and the Players Association may appear in any enforcement proceeding on behalf of any NBA player who has given authority for such appearance.

(f) In the event that Class Counsel and the NBA cannot agree on the identity of a Special Master to be appointed by the Court, the parties agree to submit the issue to the President of the American Bar Association who shall submit to the parties a list of 11 attorneys practicing in New York City (none of whom shall have nor whose firm shall have represented within the past five (5) years players, teams or owners in any professional sport). If the parties cannot within thirty (30) days of receipt of such list agree to the identity of the Special Master from among the names on such list, they shall return said list, with up to 5 names deleted therefrom by each party, to the President of the American Bar Assocation, who shall choose from the remaining names on the list the identity of the Special Master. The Special Master shall serve for consecutive three-year periods from Court Approval unless, within ninety (90) days of the end of any such three-year period, the Special Master as of such date is replaced by the giving of notice to that effect to the other party, the Court and the Special Master by the NBA, on the one hand, or by Class Counsel on the other hand. In the event of such replacement, the selection of the Special Master shall be governed by this subparagraph (f).

9. Dismissal of the Class Action

(a) Except as provided in subparagraph (b) below, upon Court Approval the Class Action will be dismissed with prejudice, and without further costs except as provided in this Stipulation and Settlement Agreement.

(b) Notwithstanding that the Non-Settling Defendant is not a party to this Stipulation and Settlement Agreement, upon the Closing Date the Class Members shall dismiss, with prejudice, Count Three of the Second Amended Complaint against the Non-Settling Defendant and will take all necessary and proper steps to dissolve the existing preliminary injunction dated May 4, 1970, as modified, regarding any merger, consolidation, acquisition or combination by or between the NBA and the Non-Settling Defendant or any of their member teams, unless previously dissolved by the Court, by causing a judgment in the form annexed hereto as Exhibit I to be entered.

10. Settlement Notice and Hearing

(a) The parties hereto shall present this Stipulation and Settlement Agreement to the Court promptly upon its execution so that the Court may determine whether sufficient showing has been made of the fairness, reasonableness and adequacy of the proposed settlement for the purpose of sending the class a Notice of Class Action Settlement.

(b) Subject to approval of the Court, a Notice of Class Action Settlement shall be mailed to the class, in the form annexed hereto as Exhibit J, and a hearing as to the fairness, reasonableness and adequacy of the settlement raised by any objection made thereto shall be held thirty (30) days from the date of such mailing, or such other date as

may be set by the Court, pursuant to Settlement Order No. 1, in the form annexed hereto as Exhibit K.

(c) The parties hereto shall file with the Court a copy of this Stipulation and Settlement Agreement, and the Exhibits thereto and the Class Counsel shall file with the Court Application for Fees and Costs.

11. Governing Law

To the extent that federal law does not govern the implementation of this Stipulation and Settlement Agreement or the Final Consent Judgment, this Stipulation and Settlement Agreement shall be construed and interpreted under, and shall be governed by, the laws of the State of New York.

12. Notice

Any notice to be given under the terms of this Stipulation and Settlement Agreement shall be given in writing by hand-delivery and first class prepaid mail addressed as follows:

To: The National Basketball Association
2 Penn Plaza
New York, New York 10001
Att: Commissioner

cc: Proskauer Rose Goetz & Mendelsohn
300 Park Avenue
New York, New York 10022
Att: David J. Stern, Esq.

To: National Basketball Players Association
15 Columbus Circle
New York, New York 10023
Att: General Counsel

cc: Weil, Gotshal & Manges
767 Fifth Avenue
New York, New York 10022
Att: Peter Gruenberger, Esq.

To: An NBA Team
At the principal address of such team as then listed on the records of the NBA or at that team's principal office
Att: General Manager

or to such other persons as the parties hereto may designate in writing.

13. Miscellaneous

(a) The Settling Defendants, the Class Members and Class Counsel shall, upon request therefor by any party hereto, execute and deliver such further documents and instruments and take such further steps as are reasonably necessary and appropriate to implement and effectuate the purposes of this Stipulation and Settlement Agreement and the Final Consent Judgment.

(b) This Stipulation and Settlement Agreement shall be binding upon and inure to the benefit of the respective parties hereto and their successors, assigns, and personal representatives.

(c) This Stipulation and Settlement Agreement may be signed in counterparts. The NBA represents that it has been duly authorized to enter into and execute this Stipulation and Settlement Agreement and Final Consent Judgment on behalf of itself and its 18 members. Class Counsel hereby represents that it has been duly authorized to execute this Stipulation and Settlement Agreement on behalf of the Plaintiffs on whose behalf it is being executed.

(d) This Stipulation and Settlement Agreement constitutes the entire agreement of the parties and all understandings, conversations and communications, oral or written (including all drafts of this Stipulation and Settlement Agreement), are merged into and superseded by this Stipulation and

Settlement Agreement. No such understandings, conversations, communications, or drafts shall be referred to in any proceeding by the parties. This Stipulation and Settlement Agreement may not be changed, altered or amended other than by a written agreement signed by the party sought to be charged with such change, alteration or amendment.

IN WITNESS WHEREOF, this Stipulation and Settlement Agreement is signed on the date above written.

WEIL, GOTSHAL & MANGES

By _____
Class Counsel, On behalf of all Plaintiffs except Chester Walker

NATIONAL BASKETBALL ASSOCIATION

By _____
Commissioner, On behalf of Itself and its 18 members

911(a)

PROSKAUER ROSE GOETZ & MENDELSOHN

300 PARK AVENUE

NEW YORK, N.Y. 10022

TELEPHONE: (212) 593-9000

WRITER'S DIRECT DIAL NUMBER

593-9310

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LAWRENCE J. ROTHENBERG
RONALD S. RAUCHBERG

WILLIAM R. ROSE
(1875-1931)

JOSEPH M. PROSKAUER
(1930-1971)

NORMAN S. GOETZ
(1925-1972)

CABLE: ROPUT
TELEX: ITT 421179
WU 125352

July 26, 1976

Peter Gruenberger, Esq.
Weil, Gotshal & Manges
767 Fifth Avenue
New York, New York 10022

Dear Peter:

This letter is to confirm the understanding and agreement between the signatories of the Stipulation and Settlement Agreement in Robertson, et al. v. National Basketball Association, et al., dated April 29, 1976 (the "Agreement"), reached with the aid and guidance of the Court, with respect to a clarification and interpretation of the Agreement as it applies to negotiations of "Player Contracts" between NBA teams and "Rookies."

Nothing in the Agreement or in this letter prohibits an NBA team from making any offer to a Rookie of a Player Contract containing any terms (such as, without limitation, duration, salary or other compensation, guarantee or absence thereof, etc.) that are not prohibited by the Agreement or any collective bargaining agreement, or a Rookie from accepting any such offer and making any proposal or counterproposal relating to terms of a Player Contract.

The Agreement provides that in the event the NBA team and the Rookie have not agreed to a Player Contract by the September 15th following the College Draft in which the

911(b)

Rookie was selected, the team, in order to preserve its exclusive NBA negotiating rights to the Rookie as provided in the Agreement, must make a "required tender" of a Player Contract to the Rookie by that date, giving the Rookie thirty (30) days to accept.

Some concern has arisen, however, that the "required tender" provision of the Agreement is susceptible of an interpretation that does not provide adequate protection for a Rookie. Accordingly, in order to preserve and maintain the freedom of negotiation of Player Contracts by Rookies, it is hereby agreed that in the event the NBA team and a Rookie have not signed a Player Contract prior to September 15th following the College Draft in which the Rookie was selected, in order to qualify within the definition of the term "required tender" as used in paragraph 2.(A) of the Agreement, the Player Contract tendered to a Rookie for all college drafts between the College Draft held in June 1976 and up to and including the College Draft held in June 1986, must be:

1. A Player Contract with a stated term of no more than one year, which contract must call for at least the minimum salary, if any, then applicable in the NBA, and may contain an Option Clause of one year, exerciseable once for at least the same salary; or

2. A Player Contract with a stated term of four years, calling for a salary in years one through four, respectively, of at least $75,000, $90,000, $100,000 and $110,000, and providing that in the event the contract is terminated by the team in accordance with Paragraph 20(b)(2) or 20(c) of the Uniform Player Contract, the team shall nevertheless be obligated to pay the player the guaranteed amount of $120,000 less all amounts paid or owing to the player as a result of services rendered under such Player Contract (but not including incentive compensation) prior to the termination of the contract; or

3. A Player Contract with a stated term of five years, calling for a salary in years one through five, respectively, of at least $75,000, $90,000, $100,000, $110,000 and $125,000, and providing that in the event the contract is terminated by the team in accordance with Paragraphs 20(b)(2) or 20(c) of the Uniform Player Contract, the team shall nevertheless be obligated to pay the player the guaranteed amount

of $165,000 less all amounts paid or owing to the player as a result of services rendered under such Player Contract (but not including incentive compensation) prior to the termination of the contract.

Under the four-year and five-year contracts discussed in paragraphs 2 and 3 above, if the player's services are terminated in accordance with Paragraphs 20(b)(2) or 20(c) of the Uniform Player Contract before the player has received the guaranteed amount in full, the balance of the guaranteed amount shall be paid to him pro rata over the remainder of the stated term of the contract, in equal annual installments commencing on the January 15 after his services are terminated.

In the event, however, that the player's services are so terminated after the date which would, under paragraph 20(b)(2) of the Uniform Player Contract, entitle the player to receive full payment of his salary for the season during which his services are terminated, the player shall receive such full payment during that season, and any part of the guaranteed amount still owing by the team shall be paid in equal annual installments over the stated term of the contract commencing with the January 15 following such full payment.

The above clarification and interpretation shall not be applicable to Player Contracts which have been entered into by a Rookie and an NBA team prior to the date hereof. This clarification and interpretation is not intended to affect any other provision of the Agreement.

Sincerely,

PROSKAUER ROSE GOETZ & MENDELSOHN

By _____
David J. Stern

AGREED AND CONSENTED TO:

WEIL, GOTSHAL & MANGES

By _____
Peter Gruenberger, Class Counsel

cc: Honorable Robert L. Carter

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

OSCAR ROBERTSON, WILLIAM BRADLEY, JOSEPH CALDWELL, ARCHIBALD CLARK, MELVIN COUNTS, JOHN HAVLICEK, DONALD KOJIS, JON MCGLOCKLIN, MCCOY MCLEMORE, THOMAS MESCHERY, JEFFREY MULLINS, WESTLEY UNSELD, RICHARD VAN ARSDALE and CHESTER WALKER, individually and as representatives of all present and future active players in the National Basketball Association,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, a joint venture, MADISON SQUARE GARDEN CENTER, INC. MADISON SQUARE GARDEN CORPORATION, MILWAUKEE PROFESSIONAL SPORTS & SERVICES, INC., THE BALTIMORE BULLETS BASKETBALL CLUB, INC., RIKO ENTERPRISES, INC., CINCINNATI BASKETBALL CLUB COMPANY, TRANS NATIONAL COMMUNICATIONS, INC., ZOLLNER CORPORATION, ATLANTA HAWKS BASKETBALL, INC., CALIFORNIA SPORTS, INCORPORATED, THE CHICAGO PROFESSIONAL BASKETBALL CORPORATION, PHOENIX PROFESSIONAL BASKETBALL CLUB, SAN FRANCISCO WARRIORS, SEATTLE SUPERSONICS CORPORATION, SAN DIEGO BASKETBALL CLUB, and NED IRISH, RAYMOND PATTERSON, ABRAHAM POLLIN, IRVING KOSLOFF, JOSEPH AXELSON, JACK WALDRON, FRED ZOLLNER, THOMAS COUSINS, JACK KENT COOKE, ELMER RICH, RICHARD BLOCH, FRANKLIN MIEULI, SAMUEL SHULMAN and ROBERT BREITBARD, individually and as the members of the Board of Governors of the National Basketball Association, and AMERICAN BASKETBALL ASSOCIATION,

Defendants.

70 Civ. 1526

CLASS ACTION COMPLAINT

(Jury Trial is Demanded)

- x

Plaintiffs, by their attorneys, for their complaint herein allege upon information and belief, except

as to paragraphs 1-5, 9-17, 19, 23-25, 36-41, 45, 48-50 and 53-61, which are alleged upon knowledge, as follows:

COUNT ONE, AS TO ALL DEFENDANTS
EXCEPT AMERICAN BASKETBALL ASSOCIATION

JURISDICTION AND VENUE

1. This claim arises and is brought under Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15 and 26) to recover treble damages and the costs of suit, including reasonable attorneys' fees, for violation by defendants of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2), and to enjoin defendants from continuing hereafter to commit such violations.

2. Jurisdiction is vested in this Court by virtue of 28 U.S.C. §§ 1331 and 1337.

3. Each defendant transacts business or is found or has an agent within this District, and the unlawful activities complained of were and are being carried on in part by defendants within this District.

THE PARTIES

4. This action is brought on behalf of the approximately 160 professional basketball players who are all of the current active players in the professional major basketball league known as the National Basketball Association (the "NBA"), and on behalf of those who in the future become active players in the NBA.

5. Plaintiffs William Bradley, Joseph Caldwell, Archibald Clark, Melvin Counts, John Havlicek, Donald Kojis, Jon McGlocklin, McCoy McLemore, Thomas Meschery, Jeffrey Mullins, Oscar Robertson, Westley Unseld, Richard Van Arsdale and Chester Walker are presently active players with, and each is the elected player representative of, one of the 14 clubs in the NBA.

6. Defendant NBA is a joint venture which operates a major professional basketball league in the United States consisting of 14 members which own and operate professional basketball clubs located in 14 different home cities in the United States under franchise from the NBA. The NBA is found within this District, maintaining its principal office at 2 Pennsylvania Plaza, New York City.

7. The NBA member clubs are owned and operated for a profit by the following defendants, each of which is a corporation, except where noted, and is found or transacts business or is doing business within this District:

Defendant Club Owner	State of Organization or Incorporation	Club Name
Madison Square Garden Corporation and Madison Square Center, Inc.	Michigan	New York Knickerbockers
Milwaukee Professional Sports & Services, Inc.	Wisconsin	Milwaukee Bucks

Defendant Club Owner	State of Organization or Incorporation	Club Name
The Baltimore Bullets Basketball Club, Inc.	Maryland	Baltimore Bullets
Riko Enterprises, Inc.	Pennsylvania	Philadelphia 76ers
Cincinnati Basketball Club Company	Ohio	Cincinnati Royals
Trans National Communications, Inc.	Massachusetts	Boston Celtics
Zollner Corporation	Indiana	Detroit Pistons
Atlanta Hawks Basketball, Inc.	Georgia	Atlanta Hawks
California Sports, Incorporated	California	Los Angeles Lakers
The Chicago Professional Basketball Corporation	Illinois	Chicago Bulls
Phoenix Professional Basketball Club	Arizona	Phoenix Suns
San Francisco Warriors (a partnership)	California	San Francisco Warriors
Seattle Supersonics Corporation	Washington	Seattle Supersonics
San Diego Basketball Club (a partnership)	California	San Diego Rockets

References hereinafter made to "defendant clubs" or "NBA clubs" include the aforesaid defendant owners and their respective clubs.

8. Defendants Irish, Patterson, Pollin, Kosloff, Axelson, Waldron, Zollner, Cousins, Cooke, Rich, Bloch, Miculi, Schulman and Breitbard are officers or representatives of the management of one of the aforesaid defendant club owners (in the order of the clubs as set forth in

paragraph 7 above), and collectively constitute the total membership of the Board of Governors of the NBA. The Board of Governors is a formal group of the NBA club owners which creates policy for and controls the affairs of the NBA. The members of the Board of Governors either reside, are found or have agents within this District.

CLASS ACTION

9. Plaintiffs are representatives of a class as defined by Rule 23 of the Federal Rules of Civil Procedure and bring this action on behalf of themselves and the entire class as described in paragraph 10 below (hereinafter sometimes referred to as the "plaintiff players").

10. The class is comprised of the approximately 160 active players who play for the 14 different NBA clubs located in 14 different home cities across the United States, and those who in the future become active players in the NBA.

11. The class is so numerous and geographically so widely distributed that joinder of all members is impracticable. There are questions of law or fact common to the class. The claims of the representative parties are typical of the claims of the class and the representative plaintiffs will fairly and adequately protect the interests of the class.

12. Each active player is (or, if a future player, will be) a signatory to a player's contract with one

of the defendant clubs. Except for provisions as to individual compensation and other variations which do not materially affect this action, the contracts are substantially identical throughout the NBA. Moreover, each active player is (or, if a future player, will be) subject to uniform agreements, rules, regulations and practices among defendants, which are (or will be) uniformly imposed upon each class member by defendants.

13. The prosecution of separate actions by individual members of the class would create the risk of

(a) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(b) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

14. In construing and enforcing their uniform agreements, rules, regulations, and practices, and in taking and planning to take the actions described in COUNT THREE hereof, the defendants have acted, refused to act or will act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

15. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and the class action is superior to other available means for the fair and efficient adjudication of the controversy.

NATURE OF TRADE AND COMMERCE

16. The primary business in which the defendants are engaged is the public exhibition of the individual and collective professional basketball talents of plaintiff players. The players are, with rare exception, graduates of the ranks of college basketball who are signed to play for one of defendant clubs, and whom defendants have described in the standard NBA player's contract as possessing extraordinary and unique skill and ability as basketball players.

17. Defendants' business of exhibiting major league professional basketball involves substantial volumes of interstate trade and commerce, including the following interstate activities: travel; communication; purchase and movement of equipment; broadcasts; telecasts; advertisements; promotions; sales of tickets and concession items; and negotiations for all of the above.

18. Defendants' aforesaid interstate transactions involve collective annual expenditures and receipts of multi-millions of dollars.

19. The NBA for many years has been the sole or dominant major professional basketball league. Major league professional basketball is a distinct market covering

the United States, which is to be distinguished from other sports and from college or minor league professional basketball for many reasons, including: the rules of the sport and the season during which it is played; the talents and rates of compensation of the players, for whom playing is their full-time profession; the nature and amounts of trade and commerce involved; the inherent structure of league play; and the appeal to and reaction of the public, both as spectators and as home viewers and listeners on television and radio.

20. Since its inception in or about 1946, the NBA (including its predecessor leagues) and the other defendants and their predecessors have engaged in a concerted plan, combination or conspiracy to monopolize and restrain the aforesaid trade and commerce in major league professional basketball. The structure of major league professional basketball and the NBA as the sole or dominant major professional league exists and has been perpetuated through various written and tacit agreements and concerted practices and activities among defendants designed: (i) generally to control, regulate and dictate the terms upon which professional major league basketball shall be played in the United States, and (ii) specifically to eliminate competition in the acquisition, allocation and employment of the NBA players. The NBA players have been forced either to accept the anticompetitive conditions so imposed upon them or to risk forfeiting their right to earn their livelihood

as professional basketball players and thus depriving them of the opportunity to exploit fully their professional talents.

21. The source of supply of basketball talent is found almost exclusively in the ranks of college players. The NBA and the other defendants, through a series of express and/or implied agreements, rules, regulations and practices, have developed the so-called college "player draft" which is designed to divide the market in this source of supply. Under the player draft, each defendant club is given the right to choose specific college players with whom it wishes to negotiate. This right is exclusive, in that if a college player for any reason does not wish to negotiate with or play for the defendant club which "owns" the rights to him, he may not negotiate with or play for any other NBA club.

22. Every college player who agrees to sign with one of the NBA clubs subsequent to the player draft, and every already established player each year, must sign a contract entitled "National Basketball Association - Uniform Player Contract" (the "Uniform Contract"), a copy of which is annexed hereto as Exhibit A. The rules of the NBA require that only the Uniform Contract shall be used by each club in signing all players. Although there are a few exceptions to this rule, the few players who are not bound by the written anticompetitive terms of the Uniform Contract are nevertheless affected by the anticompetitive

as professional basketball players and thus depriving them of the opportunity to exploit fully their professional talents.

21. The source of supply of basketball talent is found almost exclusively in the ranks of college players. The NBA and the other defendants, through a series of express and/or implied agreements, rules, regulations and practices, have developed the so-called college "player draft" which is designed to divide the market in this source of supply. Under the player draft, each defendant club is given the right to choose specific college players with whom it wishes to negotiate. This right is exclusive, in that if a college player for any reason does not wish to negotiate with or play for the defendant club which "owns" the rights to him, he may not negotiate with or play for any other NBA club.

22. Every college player who agrees to sign with one of the NBA clubs subsequent to the player draft, and every already established player each year, must sign a contract entitled "National Basketball Association - Uniform Player Contract" (the "Uniform Contract"), a copy of which is annexed hereto as Exhibit A. The rules of the NBA require that only the Uniform Contract shall be used by each club in signing all players. Although there are a few exceptions to this rule, the few players who are not bound by the written anticompetitive terms of the Uniform Contract are nevertheless affected by the anticompetitive

agreements, rules, regulations and practices concertedly imposed upon all players by defendants.

23. Each Uniform Contract must be filed with the Commissioner of the NBA, who has the power to veto any player's contract. The Commissioner, together with the Board of Governors, is empowered to, and does, unilaterally impose fines on the players.

24. The Uniform Contract provides that

(a) the player shall play basketball only for his club or its assignees until "sold" or "traded";

(b) the club has the absolute right against the will of a player to sell, exchange, assign or transfer the Uniform Contract on the same terms to another club; and

(c) if the player refuses to play for his club, the club may either terminate the Uniform Contract or seek an injunction to prevent the player from playing basketball for anyone else.

25. The Uniform Contract also contains the so-called "reserve" clause. Under the "reserve" clause, if a player refuses to sign the Uniform Contract for the next playing season, the Uniform Contract is unilaterally deemed by the club to be renewed and extended for the period of one year, upon the same terms and conditions, except that the player's compensation can be reduced by 25%.

26. The "reserve" clause was created by defendants who have construed and attempted to enforce the clause as a perpetual option or right of renewal in favor of the NBA clubs so as to bind the player to one club for his entire playing career. According to defendants, the club has the express right unilaterally to keep renewing the Uniform Contract for one year for every year so long as the player refuses to execute the Uniform Contract.

27. By agreement, rule, regulation and practice no NBA club will negotiate with a player who (i) has signed the Uniform Contract to play for another club, (ii) has refused to sign the Uniform Contract with another club and is thus under "reserve" or (iii) is not playing for another club but is voluntarily retired, under suspension, in military service, or disabled or injured. Any "traded" or "sold" player is bound to his new club by the "reserve" clause in his assigned Uniform Contract.

28. By virtue of the agreements, rules, regulations and practices described in paragraphs 21-27, once a player decides he would like to play in the NBA, he must start to play and continue to play for only one club in the NBA and none other during his playing career, except for a club to which he may be involuntarily "traded" or "sold". No other club will ever negotiate with him. Moreover, even years after his retirement as an active player, he may not seek to return to active status as a player or as a player-coach, unless the club which holds such lifetime rights to

him as a player releases him unconditionally or extracts a forced "trade" or "sale" with the club which desires that player's services.

29. Defendants have attempted to extend this control over NBA players, by use of the same and similar concerted means, in an effort to prevent the players not only from freely negotiating with clubs within the NBA, but also from negotiating with or playing for clubs in any rival leagues.

30. In 1967 a rival professional basketball league known as the American Basketball Association (the "ABA") came into being and began to compete with the NBA for available player talent and spectator approval. Beginning with the advent of the ABA in 1967 and continuing to the present, the defendants have sought to prevent NBA players from playing in the ABA by use of the same or similar predatory practices alleged above in paragraph 28.

31. In short, defendants' concerted acts and practices are designed to prevent in perpetuity any player from playing professional basketball for anyone other than the NBA club to which the exclusive rights to his services have been granted by defendants for his lifetime.

SHERMAN ACT OFFENSES

32. Beginning at least as early as 1946, the exact date being to plaintiffs unknown, and continuing until the date of the filing of this complaint, the

defendants have engaged in an unlawful combination or conspiracy to monopolize and to restrain the aforesaid trade and commerce in professional major league basketball in violation of Sections 1 and 2 of the Sherman Act.

33. The aforesaid combination or conspiracy consists of a continuing agreement, understanding and concert of action among defendants (i) generally to control, regulate and dictate the terms upon which professional major league basketball shall be played in the United States; (ii) specifically to allocate and divide the market of professional player talent; and (iii) to enforce the same by means of boycotts, blacklists and concerted refusals to deal.

34. The aforesaid combination or conspiracy has as its objective the elimination of all competition in the acquisition, allocation and employment of the services of professional basketball players.

35. Pursuant to the aforesaid combination or conspiracy, the defendants have agreed to act in concert to bring about the aforesaid objective of the combination or conspiracy and have effectuated and furthered the same by diverse means and methods, including the following:

(a) by seeking to compel all players to deal with NBA clubs only on uniform terms and conditions and to execute the Uniform Contract and none other;

(b) by construing and attempting to enforce the "reserve" clause as a perpetual right of option or renewal in favor of the NBA clubs;

(c) by refusing to permit a player during the "reserve" clause option period to play for or negotiate to play for any club in the NBA or in a competitive league;

(d) by boycotting, blacklisting and refusing to deal with any player who attempts to play for or negotiate to play for another NBA team during the "reserve" option period;

(e) by "selling" and "trading" players involuntarily and against their wishes;

(f) by instructing and seeking to compel each defendant club to deal and negotiate with all players only on uniform terms and conditions, other than as to matters of compensation, and to execute only the Uniform Contract with any player;

(g) by compelling each defendant club to refrain forever from employing or negotiating with any player who is under contract with another NBA club or who has refused to sign the Uniform Contract with another NBA club and is thus under "reserve" according to defendants;

(h) by boycotting, blacklisting or otherwise penalizing any NBA club which contracts or negotiates with any player described in subparagraph (g), above; and

(i) by utilizing the player draft as described in paragraph 21 above.

EFFECTS OF SHERMAN ACT OFFENSES

36. The aforesaid combination or conspiracy has had, among others, the following effects:

(a) competition among the defendant NBA clubs in the acquisition, allocation and employment of player talent has been suppressed and eliminated;

(b) price competition among the defendant NBA clubs for players has been suppressed and eliminated;

(c) plaintiff players have been perpetually bound against their will to one NBA club, unless "sold" or "traded" involuntarily to another NBA club, thus foreclosing them from negotiating with or playing for the NBA clubs of their choice;

(d) plaintiff players have been discouraged by means of defendants' threats from seeking employment outside of the NBA in rival leagues; and

(e) plaintiff players have been foreclosed from effectively negotiating their rates of compensation and other terms of employment, and compensation rates for players among the NBA clubs have been fixed, maintained and stabilized at artificial and noncompetitive levels.

PLAINTIFFS' INJURIES

37. As a result of the aforesaid unlawful combination or conspiracy, plaintiff players have been injured in their business and property, in that they have lost substantial amounts of income which, but for the unlawful acts of defendants, they would have earned from playing professional basketball. Moreover, since plaintiff players are not free to exploit their reputations in locations of their choice, they have been restrained and injured in the pursuit of collateral activities, such as product endorsements and publicity appearances. The amounts of such damages are not presently ascertainable; when ascertained, plaintiffs will ask leave of the Court to amend the complaint by inserting said amounts herein.

38. Plaintiff players have also been injured, apart from financial considerations, as a result of the aforesaid combination or conspiracy, in that they cannot play in the NBA in locations of their choice or for clubs which may offer more favorable opportunities or conditions of employment.

39. The aforesaid combination or conspiracy is continuing, and is causing irreparable injury to plaintiff players. Since any damages recoverable hereunder will only partially compensate them for all their injuries, plaintiff players have no complete and adequate remedy at law and the violations alleged herein should therefore be enjoined.

COUNT TWO, AS AGAINST ALL DEFENDANTS
EXCEPT AMERICAN BASKETBALL ASSOCIATION

40. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 25, 27 through 30, 32 through 35, except 35(b), and 36 above.

41. If the "reserve" clause contained in the Uniform Contract is not deemed to be a perpetual right of option or renewal, any construction and enforcement of the "reserve" clause by limiting it to a one year (or other period) option would nevertheless violate Sections 1 and 2 of the Sherman Act. Such a limited construction would still bind each player involuntarily to a defendant NBA club for one year (or other period) after the term of the Uniform Contract.

42. By virtue of the same combination or conspiracy alleged above in COUNT ONE, no other NBA club would negotiate with or employ a player during this less than perpetual option period. Any player who would seek to negotiate with another NBA club after expiration of such one year (or other) option period, and any such other NBA club which agreed to negotiate with such player, would be subjected to the same boycott, blacklist, concerted refusal to deal or other penalty customarily imposed by defendants to enforce their combination or conspiracy to monopolize and restrain the aforesaid trade and commerce in professional major league basketball. Thus, in the event the "reserve" clause is construed to mean a one

year (or any other period), rather than a perpetual, right of option or renewal, a player would still be foreclosed from dealing with any other NBA club for his lifetime.

43. However, after expiration of such one year or other period, a player could seek to negotiate with a rival professional basketball league. The existence of a rival league would thus enable a player to earn a livelihood in professional basketball, since under such limited construction of the "reserve" clause, the player might have an available escape route from the anticompetitive structure of the NBA. Moreover, so long as such a rival league flourished, the players who signed with teams in such league would not be forced to seek a return to the NBA and be faced with its policies of boycott, blacklist and concerted refusal to deal.

44. Beginning with the advent of the ABA in 1967 and continuing to the present, the defendants have unlawfully combined or conspired to preserve their monopoly position and enhance the restraints of trade and commerce in professional major league basketball by using diverse predatory practices to destroy the ABA. All such attempts to foreclose competition from the ABA to date have failed. After a slow start, the ABA is beginning to flourish as an independent rival league.

45. As a result of the competition fostered by the continued independent existence of the ABA, which has provided the potential escape route for NBA players,

certain NBA clubs have begun to increase the compensation of certain of the NBA players and prospective players above the artificially suppressed compensation levels in existence prior to the advent of competition from the ABA. The mere threat of taking this escape route by some NBA players has led to instant increases in their compensation.

46. Having failed to destroy the ABA, defendants are now combining or conspiring in further violation of Sections 1 and 2 of the Sherman Act to foreclose competition from the ABA by means of an agreement with the ABA to effect a merger, consolidation, acquisition or other combination of the two leagues (hereinafter referred to as the "merger"). Such a merger would have the purpose and effect of eliminating the ABA as the independent competitive force hereinbefore alleged.

47. In furtherance of such combination or conspiracy, the defendants are taking affirmative steps to eliminate competition from the ABA, even prior to merger of the two leagues. Defendants have entered into a non-competition agreement between the leagues and their respective clubs, pending effectuation of the merger, and are engaged in secret negotiations with the ABA to effectuate an imminent merger of the leagues.

48. The effects of the non-competition agreement and eventual merger with the ABA will be to eliminate the salutary consequences, described in paragraphs 43 and 45 above, of an independent ABA and to magnify the existing anticompetitive effects of the defendants' combination or conspiracy as alleged above.

49. Plaintiffs repeat and reallege the allegations contained in paragraphs 37 through 39 above.

COUNT THREE, AS
AGAINST ALL DEFENDANTS

50. Plaintiffs repeat and reallege the allegations contained in paragraphs 3 through 36, 38, 39 and 41 through 48 above.

51. Defendant ABA is a corporation organized under the laws of the State of Delaware, and is found or transacts business or is doing business within this District.

52. The ABA operates a major professional basketball league in the United States, in competition with the NBA, which consists of 11 members which own and operate professional basketball clubs located in 11 different home cities in the United States under franchise from the ABA.

53. Defendants' plan and scheme to effectuate a non-competition agreement and merger between the NBA and ABA constitutes a combination or conspiracy in restraint, and each overt act of defendants to consummate the same constitutes a restraint, of trade and commerce in professional major league basketball in violation of Section 1 of the Sherman Act, and constitutes an attempt to monopolize and a combination or conspiracy to monopolize, and if consummated would constitute monopolization, of such trade and commerce in violation of Section 2 of the Sherman Act.

54. The NBA and ABA are the sole competitors in professional major league basketball, which is a highly

concentrated market in the United States. Consummation of the merger would eliminate all actual and potential competition between the NBA and ABA, including competition in the acquisition, allocation and employment of plaintiff players and of all prospective major league professional basketball players. Effectuation of the non-competition agreement would eliminate all such actual and potential competition prior to a formal merger.

55. Consummation of the merger would give the NBA control of 100% of the market of professional major league basketball, and thus permit defendants freely to continue the unlawful practices alleged above in COUNTS ONE and TWO.

56. Consummation of the merger and effectuation of the non-competition agreement should be preliminarily and permanently enjoined since the former will cause and the latter is causing irreparable injury to plaintiff players, for which there is no adequate remedy at law.

COUNT FOUR, AS AGAINST ALL
DEFENDANTS EXCEPT
AMERICAN BASKETBALL ASSOCIATION

57. Jurisdiction of this claim is based upon the principles of pendent jurisdiction. The amount in controversy exceeds $10,000 exclusive of interest and costs.

58. Plaintiffs repeat and reallege the allegations contained in paragraphs 3 through 31, 33 through 39, 41 through 48 and 51 through 56.

59. By virtue of the above-described agreements, rules, regulations and practices, defendants have combined or conspired to monopolize and restrain trade and plaintiff players' free exercise of playing professional basketball, in New York and in the other states in which defendants exhibit professional basketball games, in violation of Section 340 of the General Business Law of New York and in violation of the antitrust and antiblacklisting statutes of such other states.

COUNT FIVE, AS AGAINST ALL DEFENDANTS EXCEPT AMERICAN BASKETBALL ASSOCIATION

60. Plaintiffs repeat and reallege the allegations contained in paragraphs 3 through 31, 33 through 39, 41 through 48 and 57 above.

61. By virtue of the above-described agreements, rules, regulations and practices, defendants have combined or conspired to monopolize and restrain trade and plaintiff players' free exercise of playing professional basketball in the several states in which defendants exhibit professional basketball games in violation of the common law of each of such states.

WHEREFORE, plaintiffs demand judgment against defendants, as follows:

1. With respect to the first and second counts:

(a) declaring defendants' combination or conspiracy to be unlawful under Sections 1 and 2

of the Sherman Act;

(b) preliminarily and permanently enjoining defendants from continuing to violate Sections 1 and 2 of the Sherman Act by means of the acts alleged herein or by any other means which would prevent plaintiff players from freely negotiating with any professional basketball club of their choice at the end of their current contracts, without giving effect to any alleged option or renewal right contained in the "reserve" clause;

(c) for treble the amount of damages suffered by plaintiffs as a result of the violations of the Sherman Act alleged herein; and

(d) for the costs of this action and reasonable attorneys' fees;

2. With respect to the second and third counts:

(a) declaring defendants' plan and scheme, and all steps taken pursuant thereto, to effectuate (i) a merger, consolidation, acquisition or combination by any means, by or between the NBA and ABA or its member clubs, and/or (ii) a non-competition agreement between the NBA and ABA or their respective clubs, and such agreement itself, to be unlawful under Sections 1 and 2 of the Sherman Act; and

(b) preliminarily and permanently enjoining defendants, their agents, servants, officers, employees, attorneys and all persons acting in

concert with them from taking any steps in furtherance of an attempt to effectuate or consummate any such non-competition agreement, merger, consolidation, acquisition or combination;

3. With respect to the fourth and fifth counts:

(a) declaring defendants' combination and conspiracy to be unlawful under Section 340 of the General Business Law of New York and under the statutes of the several states in which defendants exhibit professional basketball games, and under the common law of all of such states;

(b) preliminarily and permanently enjoining defendants from continuing to violate such statutes and common law by means of the acts alleged herein or by any means which would prevent plaintiffs from freely negotiating with any professional basketball club of their choice at the end of their current contracts, without giving effect to any alleged option or renewal right contained in the "reserve" clause;

(c) for the amount of damages suffered by plaintiffs as a result of the statutory and common law violations alleged herein; and

(d) for the costs of this action and reasonable attorneys' fees; and

4. Such other and different relief as may to the Court seem just and proper.

Dated: New York, New York
April 16, 1970

Ira M. Millstein
A member of the firm of
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767 Fifth Avenue
New York, N. Y. 10022
758-7800

Of Counsel:

PETER GRUENBERGER
ROBERT PITOFSKY

NATIONAL BASKETBALL ASSOCIATION
UNIFORM PLAYER CONTRACT
(Revised Form 8-29-68)

ATTACHED TO ORIGINAL

EXHIBIT A

Served
Received by DR 4/22/
Entered in Docket P
Entered in Diary For 5/13

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, WILLIAM BRADLEY, JOSEPH CALDWELL, ARCHIBALD CLARK, MELVIN COUNTS, JOHN HAVLICEK, DONALD KOJIS, JON McGLOCKLIN, McCOY McLEMORE, THOMAS MESCHERY, JEFFREY MULLINS, WESTLEY UNSELD, RICHARD VAN ARSDALE and CHESTER WALKER, individually and as representatives of all present and future active players in the National Basketball Association,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, a joint venture, MADISON SQUARE GARDEN CENTER, INC., MADISON SQUARE GARDEN CORPORATION, MILWAUKEE PROFESSIONAL SPORTS & SERVICES, INC., THE CAPITAL BULLETS BASKETBALL CLUB, INC. (formerly THE BALTIMORE BULLETS BASKETBALL CLUB, INC.), RIKO ENTERPRISES, INC., KINGS PROFESSIONAL BASKETBALL INC. (formerly CINCINNATI BASKETBALL CLUB COMPANY), BOSTON CELTIC BASKETBALL CLUB, INC. (formerly TRANS NATIONAL COMMUNICATIONS, INC.), ZOLLNER CORPORATION, ATLANTA HAWKS BASKETBALL, INC., CALIFORNIA SPORTS, INCORPORATED, THE CHICAGO PROFESSIONAL BASKETBALL CORPORATION, PHOENIX PROFESSIONAL BASKETBALL CLUB, GOLDEN STATE WARRIORS (formerly SAN FRANCISCO WARRIORS), SEATTLE SUPERSONICS CORPORATION, TEXAS SPORTS INVESTMENTS, INC. (formerly SAN DIEGO BASKETBALL CLUB), BUFFALO BRAVES, INC., CLEVELAND PROFESSIONAL BASKETBALL COMPANY and PRO BASKETBALL, INC., and AMERICAN BASKETBALL ASSOCIATION,

Defendants.

70 Civ. 1526 (RLC)

AMENDED AND SUPPLEMENTAL CLASS ACTION COMPLAINT

(Jury Trial is Demanded)

Plaintiffs, by their attorneys, for their complaint herein allege upon information and belief, except

as to paragraphs 1-5, 9-17, 19, 23-25, 36-41, 45, 48-50 and 53-61, which are alleged upon knowledge, as follows:

COUNT ONE, AS TO ALL DEFENDANTS EXCEPT AMERICAN BASKETBALL ASSOCIATION

JURISDICTION AND VENUE

1. This claim arises and is brought under Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15 and 26) to recover treble damages and the costs of suit, including reasonable attorneys' fees, for violation by defendants of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2), and to enjoin defendants from continuing hereafter to commit such violations.

2. Jurisdiction is vested in this Court by virtue of 28 U.S.C. §§ 1331 and 1337.

3. Each defendant transacts business or is found or has an agent within this District, and the unlawful activities complained of were and are being carried on in part by defendants within this District.

THE PARTIES

4. This action is brought on behalf of the approximately 160 professional basketball players who were at the time this action was originally commenced all of the current active players in the professional major basketball league known as the National Basketball Association (the "NBA"), and on behalf of those players who since that date became active players in the NBA, and those players who in the future will become active players in the NBA.

5. Plaintiffs William Bradley, Joseph Caldwell, Archibald Clark, Melvin Counts, John Havlicek, Donald Kojis, Jon McGlocklin, McCoy McLemore, Thomas Meschery, Jeffrey Mullins, Oscar Robertson, Westley Unseld, Richard Van Arsdale and Chester Walker are or were active players with, and each was, at the time this action was commenced, the elected player representative of one of the then 14 clubs in the NBA.

6. Defendant NBA is a joint venture which operates a major professional basketball league in the United States consisting of 17 members which own and operate professional basketball clubs located in 17 different home cities in the United States under franchise from the NBA. The NBA is found within this District, maintaining its principal office at 2 Pennsylvania Plaza, New York City.

7. The NBA member clubs are owned and operated for a profit by the following defendants, each of which is a corporation, except where noted, and is found or transacts business or is doing business within this District:

Defendants Club Owner	State of Organization or Incorporation	Club Name
Madison Square Garden Corporation and Madison Square Center, Inc.	Michigan	New York Knickerbockers
Milwaukee Professional Sports & Services, Inc.	Wisconsin	Milwaukee Bucks
The Capital Bullets Basketball Club, Inc. (formerly The Baltimore Bullets Basketball Club, Inc.)	Maryland	Capital Bullets (formerly Baltimore Bullets)
Riko Enterprises, Inc.	Pennsylvania	Philadelphia 76ers

Kings Professional Basketball, Inc. (formerly Cincinnati Basketball Club Company)	Ohio	Kansas City-Omaha Kings (formerly Cincinnati Royals)
Boston Celtics Basketball Club, Inc. (formerly Trans National Communi-cations, Inc.)	Massachusetts	Boston Celtics
Zollner Corporation	Indiana	Detroit Pistons
Atlanta Hawks Basketball, Inc.	Georgia	Atlanta Hawks
California Sports, Incorporated	California	Los Angeles Lakers
The Chicago Pro-fessional Basket-ball Corporation	Illinois	Chicago Bulls
Phoenix Professional Basketball Club	Arizona	Phoenix Suns
Golden State Warriors (a partnership)	California	Golden State Warriors (formerly San Francisco Warriors)
Seattle Supersonics	Washirgton	Seattle Supersonics
Texas Sports Invest-ments, Inc. (formerly San Diego Basketball Club, a partnership)	Texas	Houston Rockets (formerly San Diego Rockets)
Buffalo Braves, Inc.	New York	Buffalo Braves
Cleveland Professional Basketball Company	Ohio	Cleveland Caveliers
Pro Basketball Inc.	Oregon	Portland Trailblazers

8. Ned Irish, William Alverson, Abraham Pollin, Irving Kosloff, Joseph Axelson, Robert J. Schmertz, Jack Waldron, Fred Zollner, John Wilcox, Thomas Cousins, Jack Kent Cooke, Phillip T. Klutznick, Elmer Rich, Richard Block, Franklin Mieuli, Samuel Shulman, Raymond Patterson, Robert Brietbard, Paul Snyder, Nicholas Mileti and Herman Sarkowski are all former or present officers or representatives of the management of one of the aforesaid defendant club owners (in the order of the clubs as set forth in paragraph 7 above), and either at the time this suit was instituted or at present collectively constitute or constituted the total membership of the board of Governors of the NBA. The Board of Governors is a formal group of the NBA club owners which creates policy for and controls the affairs of the NBA.

CLASS ACTION

9. Plaintiffs are representatives of a class as defined by Rule 23 of the Federal Rules of Civil Procedure and bring this action on behalf of themselves and the entire class as described in paragraph 10 below (hereinafter sometimes referred to as the "plaintiff players").

10. The class is comprised of the approximately 365 players who play or, since the commencement of this action, have played for the 17 different NBA clubs located in 17 different home cities across the United States, and those who in the future become active players in the NBA.

11. The class is so numerous and geographically so widely distributed that joinder of all members is impracticable. There are questions of law or fact common to the class. The claims of the representative parties are typical of the claims of the class and the representative plaintiffs will fairly and adequately protect the interests of the class.

12. Each player is, has been or, if a future player, will be a signatory to a player's contract with one of the defendant clubs. Except for provisions as to individual compensation and other variations which do not materially affect this action, the contracts are substantially identical throughout the NBA. Moreover, each player is, has been or, if a future player, will be subject to uniform agreements, rules, regulations and practices among defendants which are, have been or will be uniformly imposed upon each class member by defendants.

13. The prosecution of separate actions by individual members of the class would create the risk of

(a) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(b) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjuciations or substantially impair or impede their ability to protect their interests.

14. In construing and enforcing their uniform agreements, rules, regulations, and practices, and in taking and planning to take the actions described in COUNT THREE hereof, the defendants have acted, refused to act or will act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

15. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and the class action is superior to other available means for the fair and efficient adjudication of the controversy.

NATURE OF TRADE AND COMMERCE

16. The primary business in which the defendants are engaged is the public exhibition of the individual and collective professional basketball talents of plaintiff players. The players are, with rare exception, graduates of the ranks of college basketball who are signed to play for one of the defendant clubs, and whom defendants have described in the standard NBA player's contract as possessing extraordinary and unique skill and ability as basketball players.

17. Defendants' business of exhibiting major league professional basketball involves substantial volumes of interstate trade and commerce, including the following interstate activities: travel; communication; purchase and

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movement of equipment; broadcasts; telecasts; advertisements; promotions; sales of tickets and concession items; and negotiations for all of the above.

18. Defendants' aforesaid interstate transactions involve collective annual expenditures and receipts of multi-millions of dollars.

19. The NBA for many years has been the sole or dominant major professional basketball league. Major league professional basketball is a distinct market covering the United States, which is to be distinguished from other sports and from college or minor league professional basketball for many reasons, including: the rules of the sport and the season during which it is played; the talents and rates of compensation of the players, for whom playing is their full-time profession; the nature and amounts of trade and commerce involved; the inherent structure of league play; and the appeal to and reaction of the public, both as spectators and as home viewers and listeners on television and radio.

20. Since its inception in or about 1946, the NBA (including its predecessor leagues) and the other defendants and their predecessors have engaged in a concerted plan, combination or conspiracy to monpolize and restrain the aforesaid trade and commerce in major league professional basketball. The structure of major league professional basketball and the NBA as the sole or dominant major professional league exists and has been perpetuated through

various written and tacit agreements and concerned practices and activities among defendants designed: (i) generally to control, regulate and dictate the terms upon which professional major league basketball shall be played in the United States, and (ii) specifically to eliminate competition in the acquisition, allocation and employment of the NBA players. The NBA players have been forced either to accept the anticompetitive conditions so imposed upon them or to risk forfeiting their right to earn their livelihood as professional basketball players and thus depriving them of the opportunity to exploit fully their professional talents.

21. The source of supply of basketball talent is found almost exclusively in the ranks of college players. The NBA and the other defendants, through a series of express and/or implied agreements, rules, regulations and practices, have developed the so-called college "player draft" which is designed to divide the market in this source of supply. Under the player draft, each defendant club is given the right to choose specific college players with whom it wishes to negotiate. This right is exclusive, in that if a college player for any reason does not wish to negotiate with or play for the defendant club which "owns" the rights to him, he may not negotiate with or play for any other NBA club.

22. Every college player who agrees to sign with one of the NBA clubs subsequent to the player draft, and every already established player each year, must sign a

contract entitled "National Basketball Association - Uniform Player Contract" (the "Uniform Contract"), a copy of which is annexed hereto as Exhibit A. The rules of the NBA require that only the Uniform Contract shall be used by each club in signing all players. Although there are a few exceptions to this rule, the few players who are not bound by the written anticompetitive terms of the Uniform Contract are nevertheless affected by the anticompetitive agreements, rules, regulations and practices concertedly imposed upon all players by defendants.

23. Each Uniform Contract must be filed with the Commissioner of the NBA, who has the power to veto any player's contract. The Commissioner, together with the Board of Governors, is empowered to, and does, unilaterally impose fines on the players.

24. The Uniform Contract provides that

(a) the player shall play basketball only for his club or its assignees until "sold" or "traded";

(b) the club has the absolute right against the will of a player to sell, exchange, assign or transfer the Uniform Contract on the same terms to another club; and

(c) If the player refuses to play for his club, the club may either terminate the Uniform Contract or seek an injunction to prevent the player from playing basketball for anyone else.

25. The Uniform Contract also contains the so-called "reserve" clause. Under the "reserve" clause, if a player refuses to sign the Uniform Contract for the next playing season, the Uniform Contract is unilaterally deemed by the club to be renewed and extended for the period of one year, upon the same terms and conditions, except that the player's compensation can be reduced by 25%.

26. The "reserve" clause was created by defendants, who have construed and attempted to enforce the clause as a perpetual option or right of renewal in favor of the NBA clubs so as to bind the player to one club for his entire playing career. According to defendants, the club has the express right unilaterally to keep renewing the Uniform Contract for one year for every year so long as the player refuses to execute the Uniform Contract.

27. By agreement, rule, regulation and practice no NBA club will negotiate with a player who (i) has signed the Uniform Contract to play for another club, (ii) has refused to sign the Uniform Contract with another club and is thus under "reserve" or (iii) is not playing for another club but is voluntarily retired, under suspension, in military service, or disabled or injured. Any "traded" or "sold" player is bound to his new club by the "reserve" clause in his assigned Uniform Contract.

28. By virtue of the agreements, rules, regulations and practices described in paragraphs 21-27, once a player decides he would like to play in the NBA, he must

start to play and continue to play for only one club in the NBA and none other during his playing career, except for a club to which he may be involuntarily "traded" or "sold". No other club will ever negotiate with him. Moreover, even years after his retirement as an active player, he may not seek to return to active status as a player or as a player-coach, unless the club which holds such lifetime rights to him as a player releases him unconditionally or extracts a forced "trade" or "sale" with the club which desires that player's services.

29. Defendants have attempted to extend this control over NBA players, by use of the same and similar concerted means, in an effort to prevent the players not only from freely negotiating with clubs within the NBA, but also from negotiating with or playing for clubs in any rival leagues.

30. In 1967, a rival professional basketball league known as the American Basketball Association (the "ABA") came into being and began to compete with the NBA for available player talent and spectator approval. Beginning with the advent of the ABA in 1967 and continuing to the present, the defendants have sought to prevent NBA players from playing in the ABA by use of the same or similar predatory practices alleged above in paragraph 28.

31. In short, defendants' concerted acts and practices are designed to prevent in perpetuity any player from playing professional basketball for anyone other than the NBA club to which the exclusive rights to his services have been granted by defendants for his lifetime.

SHERMAN ACT OFFENSES

32. Beginning at least as early as 1946, the exact date being to plaintiffs unknown, and continuing until the date of the filing of this complaint, the defendants have engaged in an unlawful combination or conspiracy to monopolize and to restrain the aforesaid trade and commerce in professional major league basketball in violation of Sections 1 and 2 of the Sherman Act.

33. The aforesaid combination or conspiracy consists of a continuing agreement, understanding and concert of action among defendants (i) generally to control, regulate and dictate the terms upon which professional major league basketball shall be played in the United States; (ii) specifically to allocate and divide the market of professional player talent; and (iii) to enforce the same by means of boycotts, blacklists and concerted refusals to deal.

34. The aforesaid combination or conspiracy has as its objective the elimination of all competition in the acquisition, allocation and employment of the services of professional basketball players.

35. Pursuant to the aforesaid combinations or conspiracy, the defendants have agreed to act in concert to bring about the aforesaid objective of the combination or conspiracy and have effectuated and furthered the same by diverse means and methods, including the following:

(a) by seeking to compel all players to deal with NBA clubs only on uniform terms and conditions and to execute the Uniform Contract and none other;

(b) by construing and attempting to enforce the "reserve" clauses as a perpetual right of option or renewal in favor of the NBA clubs;

(c) by refusing to permit a player during the "reserve" clause option period to play for or negotiate to play for any club in the NBA or in a competitive league;

(d) by boycotting, blacklisting and refusing to deal with any player who attempts to play for or negotiate to play for another NBA team during the "reserve" option period;

(e) by "selling" and "trading" players involuntarily and against their wishes;

(f) by instructing and seeking to compel each defendant club to deal and negotiate with all players only on uniform terms and conditions, other than as to matters of compensation, and to execute only the Uniform Contract with any player;

(g) by compelling each defendant club to refrain forever from employing or negotiating with any player who is under contract with another NBA club or who has refused to sign the Uniform Contract with another NBA club and is thus under "reserve" according to defendants;

(h) by boycotting, blacklisting or otherwise penalizing any NBA club which contracts or negotiates with any player described in subparagraph (g) above; and

(i) by utilizing the player draft as described in paragraph 21 above.

EFFECTS OF SHERMAN ACT OFFENSES

36. The aforesaid combination or conspiracy has had, among others, the following effects:

(a) competition among the defendant NBA clubs in the acquisition, allocation and employment of player talent has been suppressed and eliminated;

(b) price competition among the defendant NBA clubs for players has been suppressed and eliminated;

(c) plaintiff players have been perpetually bound against their will to one NBA club, unless "sold" or "traded" involuntarily to another NBA club, thus foreclosing them from negotiating with or playing for the NBA clubs of their choice;

(d) plaintiff players have been discouraged by means of defendants' threats from seeking employment outside of the NBA in rival leagues; and

(e) plaintiff players have been foreclosed from effectively negotiating their rates of

compensation and other terms of employment, and compensation rates for players among the NBA clubs have been fixed, maintained and stabilized at artificial and noncompetitive levels.

PLAINTIFFS' INJURIES

37. As a result of the aforesaid unlawful combination or conspiracy, plaintiff players have been injured in their business and property, in that they have lost substantial amounts of income which, but for the unlawful acts of defendants, they would have earned from playing professional basketball. Moreover, since plaintiff players are not free to exploit their reputations in locations of their choice, they have been restrained and injured in the pursuit of collateral activities, such as product endorsements and publicity appearances. The amounts of such damages are not presently ascertainable; when ascertained, plaintiffs will ask leave of the Court to amend the complaint by inserting said amounts herein.

38. Plaintiff players have also been injured, apart from financial considerations, as a result of the aforesaid combination or conspiracy, in that they cannot play in the NBA in locations of their choice or for clubs which may offer more favorable opportunities or conditions of employment.

39. The aforesaid combination or conspiracy is continuing, and is causing irreparable injury to plaintiff

players. Since any damages recoverable hereunder will only partially compensate them for all their injuries, plaintiff players have no complete and adequate remedy at law and the violations alleged herein should therefore be enjoined.

COUNT TWO, AS AGAINST ALL DEFENDANTS EXCEPT AMERICAN BASKETBALL ASSOCIATION

40. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 25, 27 through 30, 32 through 35, except 35(b), and 36 above.

41. If the "reserve" clause contained in the Uniform Contract is not deemed to be a perpetual right of option or renewal, any construction and enforcement of the "reserve" clause by limiting it to a one year (or other period) option would nevertheless violate Sections 1 and 2 of the Sherman Act. Such a limited construction would still bind each player involuntarily to a defendant NBA club for one year (or other period) after the term of the Uniform Contract.

42. By virtue of the same combination or conspiracy alleged above in COUNT ONE, no other NBA club would negotiate with or employ a player during this less than perpetual option period. Any player who would seek to negotiate with another NBA club after expiration of such one year (or other) option period, and any such other NBA club which agreed to negotiate with such player, would be subjected to the same boycott, blacklist, concerted refusal to deal or other penalty customarily imposed by defendants to enforce their combination or conspiracy to

monopolize and restrain the aforesaid trade and commerce in professional major league basketball. Thus, in the event the "reserve" clause is construed to mean a one year (or any other period), rather than a perpetual, right of option or renewal, a player would still be foreclosed from dealing with any other NBA club for his lifetime.

43. However, after expiration of such one year or other period, a player could seek to negotiate with a rival professional basketball league. The existence of a rival league would thus enable a player to earn a livelihood in professional basketball, since under such limited construction of the "reserve" clause, the player might have an available escape route from the anticompetitive structure of the NBA. Moreover, so long as such a rival league flourished, the players who signed with teams in such league would not be forced to seek a return to the NBA and be faced with its policies of boycott, blacklist and concerted refusal to deal.

44. Beginning with the advent of the ABA in 1967 and continuing to the present, the defendants have unlawfully combined or conspired to preserve their monopoly position and enhance the restraints of trade and commerce in professional major league basketball by using diverse predatory practices to destroy the ABA. All such attempts to foreclose competition from the ABA to date have failed. After a slow start, the ABA is beginning to flourish as an independent rival league.

45. As a result of the competition fostered by the continued independent existence of the ABA, which has provided the potential escape route for NBA players, certain NBA clubs have begun to increase the compensation of certain of the NBA players and prospective players above the artificially suppressed compensation levels in existence prior to the advent of competition from the ABA. The mere threat of taking this escape route by some NBA players has led to instant increases in their compensation.

46. Having failed to destroy the ABA, defendants are now combining or conspiring in further violation of Sections 1 and 2 of the Sherman Act to foreclose competition from the ABA by means of an agreement with the ABA to effect a merger, consolidation, acquisition or other combination of the two leagues (hereinafter referred to as the "merger"). Such a merger would have the purpose and effect of eliminating the ABA as the independent competitive force hereinbefore alleged.

47. In furtherance of such combination or conspiracy, the defendants are taking affirmative steps to eliminate competition from the ABA, even prior to merger of the two leagues. Defendants have entered into a non-competition agreement between the leagues and their respective clubs, pending effectuation of the merger, and are engaged in secret negotiations with the ABA to effectuate an imminent merger of the leagues.

48. The effects of the non-competition agreement and eventual merger with the ABA will be to eliminate the salutary consequences, described in paragraphs 43 and 45 above, of an independent ABA and to magnify the existing anticompetitive effects of the defendants' combination or conspiracy as alleged above.

49. Plaintiffs repeat and reallege the allegations contained in paragraphs 37 through 39 above.

COUNT THREE, AS
AGAINST ALL DEFENDANTS

50. Plaintiffs repeat and reallege the allegations contained in paragraphs 3 through 36, 38, 39 and 41 through 48 above.

51. Defendant ABA is a corporation organized under the laws of the State of Delaware, and is found or transacts business or is doing business within this District.

52. The ABA operates a major professional basketball league in the United States, in competition with the NBA, which consists of 10 members which own and operate professional basketball clubs located in 10 different home cities in the United States under franchise from the ABA.

53. Defendants' plan and scheme to effectuate a non-competition agreement and merger between the NBA and ABA constitutes a combination or conspiracy in restraint, and each overt act of defendants to consummate the same constitutes a restraint, of trade and commerce in professional major league basketball in violation of Section 1 of the

Sherman Act, and constitutes an attempt to monopolize and a combination or conspiracy to monopolize, and if consummated would constitute monopolization, of such trade and commerce in violation of Section 2 of the Sherman Act.

54. The NBA and ABA are the sole competitors in professional major league basketball, which is a highly concentrated market in the United States. Consummation of the merger would eliminate all actual and potential competition between the NBA and ABA, including competition in the acquisition, allocation and employment of plaintiff players and of all prospective major league professional basketball players. Effectuation of the non-competition agreement would eliminate all such actual and potential competition prior to a formal merger.

55. Consummation of the merger would give the NBA control of 100% of the market of professional major league basketball, and thus permit defendants freely to continue the unlawful practices alleged above in COUNTS ONE and TWO.

56. Consummation of the merger and effectuation of the non-competition agreement should be preliminarily and permanently enjoined, since the former will cause and the latter is causing irreparable injury to plaintiff players, for which there is no adequate remedy at law.

COUNT FOUR, AS AGAINST ALL
DEFENDANTS EXCEPT
AMERICAN BASKETBALL ASSOCIATION

57. Jurisdiction of this claim is based upon the principles of pendent jurisdiction. The amount in controversy exceeds $10,000 exclusive of interest and costs.

58. Plaintiffs repeat and reallege the allegations contained in paragraphs 3 through 31, 33 through 39, 41 through 48 and 51 through 56.

59. By virtue of the above-described agreements, rules, regulations and practices, defendants have combined or conspired to monopolize and restrain trade and plaintiff players' free exercise of playing professional basketball in New York and in the other states in which defendants exhibit professional basketball games, in violation of Section 340 of the General Business Law of New York and in vi tion of the antitrust and antiblacklisting statutes of such other states.

COUNT FIVE, AS AGAINST ALL
DEFENDANTS EXCEPT
AMERICAN BASKETBALL ASSOCIATION

60. Plaintiffs repeat and reallege the allegations contained in paragraphs 3 through 31, 33 through 39, 41 through 48 and 57 above.

61. By virtue of the above-described agreements, rules, regulations and practices, defendants have combined or conspired to monopolize and restrain trade and plaintiff players' free exercise of playing professional basketball in the several states in which defendants exhibit professional basketball games in violation of the common law of each of such states.

WHEREFORE, plaintiffs demand judgment against defendants, as follows:

1. With respect to the first and second counts:

(a) declaring defendants' combination or conspiracy to be unlawful under Sections 1 and 2 of the Sherman Act;

(b) preliminarily and permanently enjoining defendants from continuing to violate Sections 1 and 2 of the Sherman Act by means of the acts alleged herein or by any other means which would prevent plaintiff players from freely negotiating with any professional basketball club of their choice at the end of their current contracts, without giving effect to any alleged option or renewal right contained in the "reserve" clause;

(c) for treble the amount of damages suffered by plaintiffs as a result of the violations of the Sherman Act alleged herein; and

(d) for the costs of this action and reasonable attorneys' fees;

2. With respect to the second and third counts:

(a) declaring defendants' plan and scheme, and all steps taken pursuant thereto, to effectuate (i) a merger, consolidation, acquisition or combination by any means, by or between the NBA and ABA or its member clubs, and/or (ii) a non-competition agreement between the NBA and ABA or

their respective clubs, and such agreement itself, to be unlawful under Sections 1 and 2 of the Sherman Act; and

(b) preliminarily and permanently enjoining defendants, their agents, servants, officers, employees, attorneys and all persons acting in concert with them from taking any steps in furtherance of an attempt to effectuate or consummate any such non-competition agreement, merger, consolidation, acquisition or combination;

3. With respect to the fourth and fifth counts:

(a) declaring defendants' combination and conspiracy to be unlawful under Section 340 of the General Business Law of New York and under the statutes of the several states in which defendants exhibit professional basketball games, and under the common law of all of such states;

(b) preliminarily and permanently enjoining defendants from continuing to violate such statutes and common law by means of the acts alleged herein or by any means which would prevent plaintiffs from freely negotiating with any professional basketball club of their choice at the end of their current contracts, without giving effect to any alleged option or renewal right contained in the "reserve" clause;

963.0

(c) for the amount of damages suffered by plaintiffs as a result of the statutory and common law violations alleged herein; and

(d) for the costs of this action and reasonable attorneys' fees; and

4. Such other and different relief as may to the Court seem just and proper.

Dated: New York, New York
April 22, 1974

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NATIONAL BASKETBALL ASSOCIATION
UNIFORM PLAYER CONTRACT
(Revised Form 8-29-68)

ATTACHED TO ORIGINAL
COMPLAINT

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, WILLIAM BRADLEY, JOE CALDWELL, ARCHIE CLARK, MEL COUNTS, JOHN HAVLICEK, DONALD KOJIS, JON McGLOCKLIN, McCOY McLEMORE, THOMAS MESCHERY, JEFFRY MULLINS, WESTLY UNSELD, RICHARD VAN ARSDALE and CHESTER WALKER, individually and as representatives of all present and future active players in the National Basketball Association,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, a joint venture, MADISON SQUARE GARDEN CENTER, INC., MADISON SQUARE GARDEN CORPORATION, MILWAUKEE PROFESSIONAL SPORTS & SERVICES, INC., THE CAPITAL BULLETS BASKETBALL CLUB, INC. (formerly THE BALTIMORE BULLETS BASKETBALL CLUB, INC.), RIKO ENTERPRISES, INC., KINGS PROFESSIONAL BASKETBALL CLUB, INC. (formerly CINCINNATI BASKETBALL CLUB COMPANY), BOSTON CELTIC BASKETBALL CLUB, INC. (formerly TRANS NATIONAL COMMUNICATIONS, INC.), DETROIT PISTONS BASKETBALL COMPANY (formerly ZOLLNER CORPORATION), ATLANTA HAWKS BASKETBALL, INC., CALIFORNIA SPORTS, INCORPORATED, THE CHICAGO PROFESSIONAL BASKETBALL CORPORATION, PHOENIX PROFESSIONAL BASKETBALL CLUB, GOLDEN STATE WARRIORS (formerly SAN FRANCISCO WARRIORS), SEATTLE SUPERSONICS CORPORATION, TEXAS SPORTS INVESTMENTS, INC. (formerly SAN DIEGO BASKETBALL CLUB), BUFFALO BRAVES, INC., CLEVELAND PROFESSIONAL BASKETBALL COMPANY, PRO BASKETBALL, INC., NEW ORLEANS PROFESIONAL BASKETBALL CLUB and AMERICAN BASKETBALL ASSOCIATION,

Defendants.

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70 Civ. 1526 (RLC)

SECOND AMENDED AND SUPPLEMENTAL CLASS ACTION COMPLAINT

Plaintiffs, by their attorneys, for their complaint herein allege upon information and belief, except as to paragraphs 1-5, 9-17, 19, 23-25, 37-42, 49 and 52-54, which are alleged upon knowledge, as follows:

COUNT ONE, AS TO ALL DEFENDANTS
EXCEPT AMERICAN BASKETBALL ASSOCIATION

JURISDICTION AND VENUE

1. This claim arises and is brought under Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15 and 26) to recover treble damages and the costs of suit, including reasonable attorneys' fees, for violation by defendants of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2), and to enjoin defendants from continuing hereafter to commit such violations.

2. Jurisdiction is vested in this Court by virtue of 28 U.S C. §§ 1331 and 1337.

3. Each defendant transacts business or is found or has an agent within this District, and the unlawful activities complained of were and are being carried on in part by defendants within this District.

THE PARTIES

4. This action is brought on behalf of the approximately 160 professional basketball players who were at the time this action was originally commenced all of the current active players in the professional major basketball league known as the National Basketball Association (the "NBA"), and on behalf of those players who since that date became active players in the NBA, and those players who in the future will become active players in the NBA prior to a final judgment in this action.

5. Plaintiffs William Bradley, Joe Caldwell, Archie Clark, Mel Counts, John Havlicek, Donald Kojis, Jon McGlocklin, McCoy McLemore, Thomas Meschery, Jeffry Mullins, Oscar Robertson, Westley Unseld, Richard Van Arsdale and Chester Walker are or were active players with, and each was, at the time this action

was commenced, the elected player representative of one of the then 14 clubs in the NBA.

6. Defendant NBA is a joint venture which operates a major professional basketball league in the United States consisting of 18 members which own and operate professional basketball clubs located in 18 different home cities in the United States under franchise from the NBA. The NBA is found within this District, maintaining its principal office at 2 Pennsylvania Plaza, New York City.

7. The NBA member clubs are owned and operated for a profit by the following defendants, each of which is a corporation except where noted, and is found or transacts business or is doing business within this District:

Defendant Club Owners	State of Organization or Incorporation	Club Name
Madison Square Garden Corporation and Madison Square Garden Center, Inc.	Michigan	New York Knickerbockers
Milwaukee Professional Sports & Services, Inc.	Wisconsin	Milwaukee Bucks
The Capital Bullets Basketball Club, Inc. (formerly The Baltimore Bullets Basketball Club, Inc.)	Maryland	Capital Bullets (formerly Baltimore Bullets)
Riko Enterprises, Inc.	Pennsylvania	Philadelphia 76ers
Kings Professional Basketball Club, Inc. (formerly Cincinnati Basketball Club Company)	Ohio	Kansas City Kings (formerly Cincinnati Royals)
Boston Celtics Basketball Club, Inc. (formerly Trans National Communications, Inc.)	Massachusetts	Boston Celtics

Detroit Pistons Basketball Company (a partnership) (formerly Zollner Corporation)	Michigan	Detroit Pistons
Atlanta Hawks Basketball, Inc.	Georgia	Atlanta Hawks
California Sports, Incorporated	California	Los Angeles Lakers
The Chicago Professional Basketball Corporation	Illinois	Chicago Bulls
Phoenix Professional Basketball Club (a partnership)	Arizona	Phoenix Suns
Golden State Warriors (a partnership) (formerly San Francisco Warriors)	California	Golden State Warriors (formerly San Francisco Warriors)
Seattle Supersonics Corporation	Washington	Seattle Supersonics
Texas Sports Investments, Inc. (formerly San Diego Basketball Club, a partnership)	Texas	Houston Rockets
Buffalo Braves, Inc.	New York	Buffalo Braves
Cleveland Professional Basketball Company	Ohio	Cleveland Cavaliers
Pro Basketball Inc.	Oregon	Portland Trailblazers
New Orleans Professional Basketball Club (a partnership)	Louisiana	New Orleans Jazz

8. Michael Burke, Ned Irish, William Alverson, Abraham Pollin, Irving Kosloff, Joseph Axelson, Irving Levin, Robert J. Schmertz, Jack Waldron, William Davidson, Fred Zollner, John Wilcox, Thomas Cousins, Donald Cooke, Jack Kent Cooke, William Wirtz, Phillip T. Klutznick, Elmer Rich, Richard Bloch, Franklin Mieuli, Samuel Schulman, Raymond Patterson, Robert Breitbard, Paul Snyder, Nicholas Mileti, Lawrence Weinberg, Herman Sarkowsky

and Sam Battistone are all former or present officers or representatives of the management of one of the aforesaid defendant club owners (in the order of the clubs as set forth in paragraph 7 above), and either at the time this suit was instituted or at present collectively constitute or constituted the total membership of the Board of Governors of the NBA. The Board of Governors is a formal group of the NBA club owners which creates policy for and controls the affairs of the NBA.

CLASS ACTION

9. Plaintiffs are representatives of a class as defined by Rule 23 of the Federal Rules of Civil Procedure and bring this action on behalf of themselves and the entire class as described in paragraph 10 below (hereinafter sometimes referred to as the "plaintiff players").

10. The class is comprised of all the players who (1) were on the active list of or under contract to a team in the NBA as of or since April 16, 1970 and who played at least one regular season or play-off game in the NBA during or since the basketball season which included April 16, 1970 and (2) in the future play at least one such game for a team in the NBA prior to the date of a final judgment in this action.

11. The class is so numerous and geographically so widely distributed that joinder of all members is impracticable. There are questions of law or fact common to the class. The claims of the representative parties are typical of the claims of the class and the representative plaintiffs will fairly and adequately protect the interests of the class.

12. Each player is, has been or, if a future player,

will be a signatory to a player's contract with one of the defendant clubs. Except for provisions as to individual compensation and other variations which do not materially affect this action, the contracts are substantially identical throughout the NBA. Moreover, each player is, has been or, if a future player, will be subject to uniform agreements, rules, regulations and practices among defendants, which are, have been or will be uniformly imposed upon each class member by defendants.

13. The prosecution of separate actions by individual members of the class would create the risk of:

(a) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(b) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

14. In construing and enforcing their uniform agreements, rules, regulations, and practices, and in taking and planning to take the actions described in COUNT THREE hereof, the defendants have acted, refused to act or will act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

15. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and the class action is superior to other available means for the fair and efficient adjudication of the controversy.

NATURE OF TRADE AND COMMERCE

16. The primary business in which the defendants are engaged is the public exhibition of the individual and collective professional basketball talents of plaintiff players. The players are, with rare exception, graduates of the ranks of college basketball who are signed to play for one of the defendant clubs, and whom defendants have described in the standard NBA player's contract as possessing extraordinary and unique skill and ability as basketball players.

17. Defendants' business of exhibiting major league professional basketball involves substantial volumes of interstate trade and commerce, including the following interstate activities: travel; communication; purchase and movement of equipment; broadcasts; telecasts; advertisements; promotions; sales of tickets and concession items; and negotiations for all of the above.

18. Defendants' aforesaid interstate transactions involve collective annual expenditures and receipts of multi-millions of dollars.

19. The NBA for many years has been the sole or dominant major professional basketball league. Major league professional basketball is a distinct market covering the United States, which is to be distinguished from other sports and from college or minor league professional basketball for many reasons, including: the rules of the sport and the season during which it is played;

the talents and rates of compensation of the players, for whom playing is their full-time profession; the nature and amounts of trade and commerce involved and the appeal to and reaction of the public, both as spectators and as home viewers and listeners on television and radio.

20. Since its inception in or about 1946, the NBA (including its predecessor leagues) and the other defendants and their predecessors have engaged in a concerted plan, combination or conspiracy to monopolize and restrain the aforesaid trade and commerce in major league professional basketball. The structure of major league professional basketball and the NBA as the sole or dominant major professional league exists and has been perpetuated through various written and tacit agreements and concerted practices and activities among defendants designed: (i) generally to control, regulate and dictate the terms upon which professional major league basketball shall be played in the United States, and (ii) specifically to eliminate competition with respect to the acquisition, allocation, employment and compensation of NBA players. The NBA players have been forced either to accept the anticompetitive conditions so imposed upon them or to risk forfeiting their right to earn their livelihood as professional basketball players and thus depriving them of the opportunity to exploit fully their professional talents.

21. The source of supply of basketball talent is found almost exclusively in the ranks of college players. The NBA and the other defendants, through a series of express and/or implied agreements, rules, regulations and practices, have

developed the so-called college "player draft" which is designed to divide the market in this source of supply. Under the player draft, each defendant club is given the right to choose specific college players with whom it wishes to negotiate. This right is exclusive, in that if a college player for any reason does not wish to negotiate with or play for the defendant club which "owns" the rights to him, he may not negotiate with or play for any other NBA club.

22. Every college player who agrees to sign with one of the NBA clubs subsequent to the player draft, and every already established player each year, must sign a contract entitled "National Basketball Association - Uniform Player Contract" (the "Uniform Contract"); a copy of the form which was used in 1970 is annexed hereto as Exhibit A. The rules of the NBA require that only the Uniform Contract shall be used by each club in signing all players. Although there are a few exceptions to this rule, the few players who are not bound by all of the written anticompetitive terms of the Uniform Contract are nevertheless injured by the anticompetitive agreements, rules, regulations and practices concertedly imposed upon all players by defendants.

23. Each Uniform Contract must be filed with the Commissioner of the NBA, who has the power to veto any player's contract. The Commissioner, together with the Board of Governors, is empowered to, and does, unilaterally impose fines on players and teams.

24. The Uniform Contract provides, inter alia that:

(a) the player shall play basketball only for his club or its assignees until "sold" or "traded";

(b) the club has the absolute right against the will of a player to sell, exchange, assign or transfer the Uniform Contract on the same terms to another club; and

(c) if the player refuses to play for his club, the club may either terminate the Uniform Contract or seek an injunction to prevent the player from playing basketball for anyone else.

25. The Uniform Contract also contains the so-called "reserve" clause. Under the "reserve" clause, if a player refuses to sign the Uniform Contract for the next playing season, the Uniform Contract is unilaterally deemed by the club to be renewed and extended for the period of one year, upon the same terms and conditions, except that at the time this action was originally commenced the NBA club had the right unilaterally to reduce the player's compensation by 25%.

26. The "reserve" clause was created by defendants, who construed and attempted to enforce the clause as a perpetual option or right of renewal in favor of the NBA clubs so as to bind the player to one club for his entire playing career. Under the Uniform Contract, the club has the express right unilaterally to keep renewing the Uniform Contract for one year for every year so long as the player refuses to execute the Uniform Contract.

27. By agreement, rule, regulation and practice no NBA club may or will negotiate with a player who (i) has signed the Uniform Contract to play for another club, (ii) has refused to sign the Uniform Contract tendered by such other club and is thus under "reserve" to that club or (iii) is not playing for such other club but is on that club's draft list, voluntary retired list, suspension list, military service list, disabled or injured

list or any other player list that has existed in the NBA. Teams in the NBA which attempt to negotiate with a player who is on one of such player lists or is under "reserve" are subject to severe penalties and have been penalized therefor according to the NBA's "tampering" and other rules.

28. The NBA and each NBA team has engaged in the practice of exchanging, distributing and making available to each other information relating to player compensation for the purpose and effect of artificially stabilizing, reducing and fixing prices, i.e., the players' compensation levels.

29. By virtue of the agreements, rules, regulations and practices described in paragraphs 21-28, once a player is drafted by an NBA team, he must start to play and continue to play for only one club in the NBA and none other during his playing career, except for a club to which he may be involuntarily "traded" or "sold". No other club will ever negotiate with him. Moreover, even years after his retirement as an active player, he may not seek to return to active status as a player or as a player-coach, unless the club which holds such lifetime rights to him as a player releases him unconditionally or extracts a forced "trade" or "sale" with the club which desires that player's services.

30. Defendants have attempted to extend this control over NBA players, by use of the same and similar concerted means, in an effort to prevent the players not only from freely negotiating with clubs within the NBA, but also from negotiating with or playing for clubs in any rival leagues.

31. In 1967, a rival professional basketball league known as the American Basketball Association (the "ABA") came into being and began to compete with the NBA for available player talent and spectator approval. Beginning with the advent of the ABA in 1967 and continuing to the present, the defendants have sought to prevent NBA players from playing in the ABA by use of the same or similar predatory practices alleged above.

32. In short, defendants' concerted acts and practices are designed to prevent in perpetuity any player from playing professional basketball for anyone other than the NBA club to which the exclusive rights to his services have been granted by defendants for his lifetime.

SHERMAN ACT OFFENSES

33. Beginning at least as early as 1946, the exact date being to plaintiffs unknown, and continuing until the present the defendants have engaged in an unlawful combination or conspiracy to monopolize and to restrain the aforesaid trade and commerce in professional major league basketball in violation of Sections 1 and 2 of the Sherman Act.

34. The aforesaid combination or conspiracy consists of a continuing agreement, understanding and concert of action among defendants (i) generally to control, regulate and dictate the terms upon which professional major league basketball shall by played in the United States; (ii) specifically to allocate and divide the market of professional player talent; and (iii) to enforce the same by means of boycotts, blacklists, penalties and concerted refusals to deal.

35. The aforesaid combination or conspiracy has as its objective the elimination of all competition with respect to the acquisition, allocation, employment and compensation of NBA players and their services as professional basketball players.

36. Pursuant to the aforesaid combination or conspiracy, the defendants have agreed to act in concert to bring about the aforesaid objective of the combination or conspiracy and have effectuated and furthered the same by diverse means and methods, including the following:

(a) by seeking to compel all players to deal with NBA clubs only on uniform terms and conditions and to execute the Uniform Contract and none other;

(b) by maintaining, utilizing and enforcing the draft rules and player list rules which bind a player to one team for life;

(c) by maintaining, construing and attempting to enforce the "reserve" clause as a perpetual right of option or renewal in favor of the NBA clubs;

(d) by refusing to permit a player under the "reserve" clause to one team or while on a player list of one team to play for or negotiate to play for any other team in the NBA or in a competitive league;

(e) by boycotting, blacklisting, penalizing and refusing to deal with any player who attempts to play for or negotiate to play for another NBA team while under the "reserve" or option period or on a player list;

(f) by "selling" and "trading" players involuntarily and against their wishes;

(g) by instructing and seeking to compel each defendant club to deal and negotiate with all players only on uniform terms and conditions, other than as to matters of compensation, and to execute only the Uniform Contract with any player;

(h) by compelling each defendant club to refrain forever from employing or negotiating with any player who is under contract with another NBA club or who has refused to sign the Uniform Contract with another NBA club and is thus under "reserve" or who is on any player list of another club;

(i) by enacting so-called "tampering" and other rules authorizing the levy of severe fines and penalties on any NBA club which negotiates or even contacts any player described in subparagraph (h) above;

(j) by boycotting, blacklisting or otherwise penalizing any NBA club which contracts or negotiates with any player described in subparagraph (h) above; and

(k) by exchanging distributing and making available among and between NBA clubs and the NBA detailed information relating to player compensation, including individual player salaries, in order to stabilize, reduce and fix player compensation levels in the NBA.

EFFECTS OF SHERMAN ACT OFFENSES

37. The aforesaid combination or conspiracy has had, among others, the following effects:

(a) competition among the defendant NBA clubs in the acquisition, allocation and employment of player talent has been suppressed and eliminated;

(b) price competition among the defendant NBA clubs for players has been suppressed and eliminated;

(c) plaintiff players have been perpetually bound against their will to one NBA club, unless "sold" or "traded" involuntarily to another NBA club, thus foreclosing them from negotiating with or playing for the NBA clubs of their choice;

(d) plaintiff players have been discouraged by means of defendants' threats from seeking employment outside of the NBA in rival leagues; and

(e) plaintiff players have been foreclosed from effectively negotiating their rates of compensation and other terms of employment, and compensation rates for players among the NBA clubs have been fixed, maintained and stabilized at artificial and noncompetitive levels.

PLAINTIFFS' INJURIES

38. As a result of the aforesaid unlawful combination or conspiracy, plaintiff players have been injured in their business and property, in that they have lost substantial amounts of income which, but for the unlawful acts of defendants, they would have earned from playing professional basketball. Moreover, since plaintiff players are not free to exploit their reputations in

locations of their choice, they have been restrained and injured in the pursuit of collateral activities, such as product endorsements and publicity appearances. The amounts of such damages are not presently ascertainable; when ascertained at trial, plaintiffs will ask leave of the Court to amend the complaint by inserting said amounts herein.

39. Plaintiff players have also been injured as a result of the aforesaid combination or conspiracy, either because the "trading" rules do not allow them to remain in locations of their choice and/or remain with clubs which may offer more favorable opportunities or the unilateral allocation rules or terms require that they play in NBA locations not of their choice nor with clubs which may offer more favorable opportunities or terms.

40. The aforesaid combination or conspiracy is continuing, and is causing irreparable injury to plaintiff players. Since any damages recoverable hereunder will only partially compensate them for all their injuries, plaintiff players have no complete and adequate remedy at law and the violations alleged herein should therefore be enjoined.

COUNT TWO, AS AGAINST ALL DEFENDANTS EXCEPT AMERICAN BASKETBALL ASSOCIATION

41. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 25, 27 through 31, 33 through 37.

42. On or about September 2, 1971, the NBA and its teams announced to the players for the first time their interpretation that a team's renewal rights under the reserve clause thereafter would be limited to a single exercise of an option to renew the player's contract, which renewal would be for only one year.

However, the language of the reserve clause which permits the continuous renewal of an unlimited number of options was not changed.

43. Also following commencement of this action, the NBA officially announced for the first time the existence of a "reserve compensation plan". Under that plan, no NBA team may freely negotiate or execute a contract with a player who has completed the entire term (including all renewal or option periods) of his contract with another NBA team, unless the new team pays compensation (in the form of money, and/or players and/or draft selections) to the player's old team. The level of such compensation can be and is set by the player's former team or the NBA Commissioner in a manner that prevents competition for the player's services. Thus, no player can negotiate freely with a new team for his services, even after his old team's renewal or option rights under the reserve clause have totally expired.

44. The existence, imposition and enforcement of the reserve compensation plan, coupled with an option or renewal right of either one or more than one year's duration, has the identical purpose and effect as a perpetual "reserve" right in favor of the NBA clubs. This reserve system effectively binds a player to one club for his entire career, since it prevents or discourages other clubs from bidding for such player's services and forecloses a player from competitively negotiating a contract with the same or a different NBA team.

45. Even if the reserve clause contained in the Uniform Contract (either with or without the reserve compensation plan) is not deemed to be a perpetual right of option or renewal, any construction and enforcement of the "reserve" clause by

limiting it to a one-year (or other period) option would nevertheless violate Sections 1 and 2 of the Sherman Act. Such a limited construction would still bind each player involuntarily to a defendant NBA club for one year (or other period) after the term of the Uniform Contract.

46. By virtue of the same combination or conspiracy alleged above in COUNT ONE, no other NBA club would negotiate with or employ a player during this less than perpetual option period. Any player who would seek to negotiate with another NBA club after expiration of such one-year (or other) option period, and any such other NBA club which agreed to negotiate with such player, would be subjected to the same boycott, blacklist, concerted refusal to deal or other penalty customarily imposed by defendants to enforce their combination or conspiracy to monopolize and restrain the aforesaid trade and commerce in professional major league basketball. Thus, in the event the "reserve" clause is construed to mean a one year (or any other period), rather than a perpetual, right of option or renewal, a player would still be foreclosed from dealing with any other NBA club for his lifetime.

47. However, after expiration of such one year or other period, a player could seek to negotiate with a rival professional basketball league. The existence of a rival league would thus enable a player to earn a livelihood in professional basketball, since under such limited construction of the "reserve" clause, the player might have an available escape route from the anticompetitive structure of the NBA. Moreover, so long as such a rival league flourished, the players who signed with teams in such league would not be forced to seek a return to the

NBA and be faced with its policies of boycott, blacklist and concerted refusal to deal.

48. Beginning with the advent of the ABA in 1967 and continuing to the present, the defendants have unlawfully combined or conspired to preserve their monopoly position and enhance the restraints of trade and commerce in professional major league basketball by using diverse predatory practices to destroy the ABA. All such attempts to foreclose competition from the ABA to date have failed. After a slow start, the ABA began to flourish as an independent rival league.

49. As a result of the competition fostered by the continued independent existence of the ABA, which has provided the potential escape route for NBA players, certain NBA clubs have begun to increase the compensation of certain of the NBA players and prospective players above the artificially suppressed compensation levels in existence prior to the advent of competition from the ABA. The mere threat of taking this escape route by some NBA players has led to instant increases in their compensation.

50. Having failed to destroy the ABA, defendants have combined or conspired in further violation of Sections 1 and 2 of the Sherman Act to foreclose competition from the ABA by means of an agreement with the ABA to effect a merger, consolidation, acquisition or other combination of the two leagues (hereinafter referred to as the "merger"). Such a merger would have the purpose and effect of eliminating the ABA as the independent competitive force hereinbefore alleged.

51. In furtherance of such combination or conspiracy, the defendants have taken affirmative steps to eliminate competition from the ABA, even prior to the merger of the two leagues. Defendants entered into a non-competition agreement between the leagues and their respective clubs, pending effectuation of the merger, and engaged in secret negotiations with the ABA to effectuate an imminent merger of the leagues.

52. The effects of the non-competition agreement and any eventual merger with the ABA will be to eliminate the salutary consequences, described in paragraphs 47 and 49 above, of an independent ABA and to magnify the existing anti-competitive effects of the defendants' combination or conspiracy as alleged above.

53. Plaintiffs repeat and allege the allegations contained in paragraphs 38 through 40 above.

COUNT THREE, AS
AGAINST ALL DEFENDANTS

54. Plaintiffs repeat and reallege the allegations contained in paragraphs 3 through 37, 39, 40 and 42 through 52 above.

55. Defendant ABA is a corporation organized under the laws of the State of Delaware, and is found or transacts business or is doing business within this District.

56. The ABA operates a major professional basketball league in the United States, in competition with the NBA, which consists of 10 members which own and operate professional basketball clubs located in 10 different home cities in the United States under franchise from the ABA.

57. Defendants' plan and scheme to effectuate a non-competition agreement and merger between the NBA and ABA constitutes a combination or conspiracy in restraint, and each overt act of defendants to consummate the same constitutes a restraint, of trade and commerce in professional major league basketball in violation of Section 1 of the Sherman Act, and constitutes an attempt to monopolize and a combination or conspiracy to monopolize, and if consummated would constitute monopolization, of such trade and commerce in violation of Section 2 of the Sherman Act.

58. The NBA and ABA are the sole competitors in professional major league basketball, which is a highly concentrated market in the United States. Consummation of the merger would eliminate all actual and potential competition between the NBA and ABA, including competition in the acquisition, allocation and employment of plaintiff players and of all prospective major league professional basketball players. Effectuation of the non-competition agreement would eliminate all such actual and potential competition prior to a formal merger.

59. Consummation of the merger would give the NBA control of 100% of the market of professional major league basketball, and thus permit defendants freely to continue the unlawful practices alleged above in COUNTS ONE and TWO.

60. Consummation of the merger and effectuation of the non-competition agreement should be preliminarily and permanently enjoined, since the former will cause and the latter is causing irreparable injury to plaintiff players, for which there is no adequate remedy at law.

WHEREFORE, plaintiffs demand judgment against defendants, as follows:

1. With respect to the first and second counts:

(a) declaring defendants' combination or conspiracy to be unlawful under Sections 1 and 2 of the Sherman Act;

(b) preliminarily and permanently enjoining defendants from continuing to violate Sections 1 and 2 of the Sherman Act by means of the acts alleged herein or by any other means which would prevent plaintiff players from freely negotiating with any professional basketball club of their choice when they enter the NBA and at the end of their current contracts, without giving effect to any alleged draft right, player list right, option or renewal right contained in the "reserve" clause, or the NBA's so-called reserve compensation plan;

(c) for treble the amount of damages suffered by plaintiffs as a result of the violations of the Sherman Act alleged herein; and

(d) for the costs of this action and reasonable attorneys' fees;

2. With respect to the second and third counts:

(a) declaring defendants' plan and scheme, and all steps taken pursuant thereto, to effectuate (i) a merger, consolidation, acquisition or combination by any means, by or between the NBA and ABA or its member clubs, and/or (ii) a non-competition agreement between

the NBA and ABA or their respective clubs, and such agreement itself, to be unlawful under Sections 1 and 2 of the Sherman Act; and

(b) preliminarily and permanently enjoining defendants, their agents, servants, officers, employees, attorneys and all persons acting in concert with them from taking any steps in furtherance of an attempt to effectuate or consummate any such non-competition agreement, merger, consolidation, acquisition or combination;

(c) for the costs of this action and reasonable attorneys' fees.

3. Such other and different relief as may to the Court seem just and proper.

Dated: New York, New York
November 21, 1975

WEIL, GOTSHAL & MANGES

By _____
(A Member of the Firm)
767 Fifth Avenue
New York, New York 10022
(212) 758-7800

NATIONAL BASKETBALL ASSOCIATION
UNIFORM PLAYER CONTRACT
(Revised Form 8-29-68)

ATTACHED TO ORIGINAL
COMPLAINT

989

NATIONAL BASKETBALL ASSOCIATION

UNIFORM PLAYER CONTRACT

(For Use When Contract Is For A Single Season)

THIS AGREEMENT made this ..... day of ....., 19 .... by and between ..... (hereinafter called the "Club"), a member of the National Basketball Association (hereinafter called the "Association") and ..... whose address is shown below (hereinafter called the "Player").

WITNESSETH:

In consideration of the mutual promises hereinafter contained, the parties hereto promise and agree as follows:

1. The Club hereby employs the Player as a skilled basketball player for the term of one year from the 1st day of September 19 ..... The Player's employment shall include attendance at training camp, playing the games scheduled for the Club's team during the schedule season of the Association, playing all exhibition games scheduled by the Club during and prior to the schedule season, playing (if invited to participate) in the Association's All-Star Game and attending every event (including, but not limited to, the All-Star Game luncheon and/or banquet) conducted in association with the All-Star Game, and playing the playoff games subsequent to the schedule season. Players other than rookies will not be required to attend training camp earlier than four weeks prior to the first game of the Association's schedule season. Rookies may be required to attend training camp at an earlier date. Exhibition games shall not be played on the three days prior to the opening of a team's regular season schedule, nor on the day prior to a regularly scheduled game, nor on the day prior to and the day following the All-Star Game. Exhibition games prior to the schedule season shall not exceed eight (including intra-squad games for which admission is charged) and exhibition games during the regularly scheduled season shall not exceed three.

2. The Club agrees to pay the Player for rendering services described herein the sum of $ (less all amounts required to be withheld from salary by Federal, State and local authorities and exclusive of any amount which the Player shall be entitled to receive from the Player Playoff Pool) in twelve equal semi-monthly payments beginning with the first of said payments on November 1st of the season above described and continuing with such payments on the first and fifteenth of each month until said sum is paid in full; provided however, if the Club does not qualify for the playoffs, the payments due subsequent to the conclusion of the schedule season shall become due and payable immediately after the conclusion of the schedule season.

3. The Club agrees to pay all proper and necessary expenses of the Player, including the reasonable board and lodging expenses of the Player while playing for the Club "on the road" and during training camp if the Player is not then living at home. The Player, while "on the road" (and at training camp only if the Club does not pay for meals directly) shall be paid $19.00 per day as meal expense allowance in accordance with the following schedule: breakfast $3.00; lunch $6.00; dinner $10. No deductions shall be made for meals served on an airplane. While the Player is at training camp (and if the Club does not pay for meals directly), the meal expense allowance shall be paid in weekly installments commencing with the first week of training camp. For the purposes of this paragraph, the Player shall be considered to be "on the road" from the time the Club leaves its home city until the time the Club arrives back at its home city. In addition, the Club agrees to pay $50.00 per week to the

Player for the four weeks prior to the first game of the Association's schedule season that the Player is either in attendance at training camp or engaged in playing the exhibition schedule.

4. The Player agrees to observe and comply with all requirements of the Club respecting conduct of its team and its players, at all times whether on or off the playing floor. The Club may, from time to time during the continuance of this contract, establish reasonable rules for the government of its players "at home" and "on the road", and such rules shall be part of this contract as fully as if herein written and shall be binding upon the Player; for any violation of such rules or for any conduct impairing the faithful and thorough discharge of the duties incumbent upon the Player, the Club may impose reasonable fines upon the Player and deduct the amount thereof from any money due or to become due to the Player. The Club may also suspend the Player for violation of any rules so established, and during such suspension the Player shall not be entitled to any compensation under this contract. When the Player is fined or suspended, he shall be given notice in writing, stating the amount of the fine or the duration of the suspension and the reason therefor. Disputes under this paragraph shall be resolved in the manner provided for in paragraph 21 hereof.

5. The Player agrees (a) to report at the time and place fixed by the Club in good physical condition; (b) to keep himself throughout the entire season in good physical condition; (c) to give his best services, as well as his loyalty to the Club, and to play basketball only for the Club and its assignees; (d) to be neatly and fully attired in public and always to conduct himself on and off the court according to the highest standards of honesty, morality, fair play and sportsmanship; and (e) not to do anything which is detrimental to the best interests of the Club or of the Association.

6. If the Player, in the sole judgment of the physician designated for that purpose by the Club, is not in good physical condition at the date of his first scheduled game for the Club, or if, during the season, he fails to remain in good physical condition, unless such condition results directly from playing basketball for the Club, so as to render him, in the sole judgment of the Club's physician, unfit to play skilled basketball, the Club shall have the right to suspend such Player until such time as, in the sole judgment of the Club's physician, the Player is in sufficiently good physical condition to play skilled basketball, and in the event of such suspension, the annual sum payable to the Player shall be reduced in the same proportion as the length of the period of disability during which, in the sole judgment of the Club's physician, the Player is unfit to play skilled basketball, bears to the length of the season. If the Player is injured as a direct result of participating in any basketball practice or game played for the Club, the Club will pay the Player's reasonable hospitalization until he is discharged from the hospital and his reasonable medical expenses and doctor's bills, provided the hospital and the doctor are selected by the Club, and provided further, that the Club's obligation to pay said medical expenses and said doctor's bills shall terminate at a period not exceeding eight (8) weeks after the injury. If, in the sole judgment of the physician designated for that purpose by the Club, the Player's injuries resulted directly from playing for the Club and render him unfit to play skilled basketball, then, so long as such unfitness continues, but in no event beyond the term of one year referred to in paragraph 1 of this agreement, the Club shall pay to the Player the compensation prescribed in paragraph 2 of this agreement. The Club's obligations hereunder shall be reduced by any workmen's compensation benefits and any insurance provided for by the Club whether paid or payable to the Player, and the Player hereby releases the Club from any and every other obligation or liability arising out of any such injuries.

7. The Player agrees to give to the Club's coach, or to the Club's physician, immediate notice of any injury suffered by him, including the time, place, cause and nature of such injury.

8. Should the Player become disabled as provided in the preceding section, he will submit himself to a medical examination and treatment by a physician designated by the Club. Such examination when made at the request of the Club shall be at its expense, unless made necessary by some act or conduct of the Player contrary to the terms of this contract.

9. The Player represents and agrees that he has extraordinary and unique skill and ability as a basketball player, that the services to be rendered by him hereunder cannot be placed or the loss thereof adequately compensated for in money damages, and that any breach by the Player of this contract will cause irreparable injury to the Club and to its assignees. Therefore, it is agreed that in the event it is alleged by the Club that the Player is playing, attempting or threatening to play, or negotiating for the purpose of playing, during the term of this contract, for any other person, firm, corporation or organization, the Club and its assignees (in addition to any other remedies that may be available to them judicially or by way of arbitration) shall have the right to obtain from any court or arbitrator having jurisdiction, such equitable relief as may be appropriate, including a decree enjoining the player from any further such breach of this contract, and enjoining the Player from playing basketball for any other person, firm, corporation or organization during the term of this contract. In any suit, action or arbitration proceeding brought to obtain such relief, the Player does hereby waive his right, if any, to trial by jury, and does hereby waive his right, if any, to interpose any counterclaim or set-off for any cause whatever.

10. The Club shall have the right to sell, exchange, assign or transfer this contract to any other professional basketball club and the Player agrees to accept such sale, exchange, assignment or transfer and to faithfully perform and carry out this contract with the same force and effect as if it had been entered into by the Player with the assignee club instead of with this Club.

11. In the event that the Player's contract is sold, exchanged, assigned or transferred to any other professional basketball club, all reasonable expenses incurred by the Player in moving himself and his family from the home city of the Club to the home city of the club to which such sale, exchange, assignment or transfer is made, as a result thereof, shall be paid by the assignee club. Such assignee club hereby agrees that its acceptance of the assignment of this contract constitutes agreement on its part to make such payment.

12. In the event that the Player's contract is assigned to another club the Player shall forthwith be notified orally or by a notice in writing, delivered to the Player personally or delivered or mailed to his last known address, and the Player shall report to the assignee club within forty-eight hours after said notice has been received or within such longer time for reporting as may be specified in said notice. If the Player does not report to the club to which his contract has been assigned within the aforesaid time, the Player may be suspended by such club and he shall [illegible] the sums which would otherwise be payable to him as long as the suspension lasts.

13. The Club will not pay and the Player will not accept any bonus or anything of value for winning any particular Association game or series of games or for attaining a certain position by the Club's team in the standing of the league operated by the Association as of a certain date, other than the final standing of the team.

14. This contract shall be valid and binding upon the Club and the Player immediately upon its execution. The Club agrees to file a copy of this contract with the Commissioner of the Association prior to the first game of the schedule season or within forty-eight (48) hours of its execution, whichever is later; provided, however, the Club agrees that if the contract is executed prior to the start of the schedule season and if the Player so requests, it will file a copy of this contract with the Commissioner of the Association within thirty (30) days of its execution, but not later than the date hereinabove specified. If pursuant to the Constitution and By-Laws the Commissioner disapproves this contract within ten (10) days after the filing thereof in his office, this contract shall thereupon terminate and be of no further force or effect and the Club and the Player shall thereupon be relieved of their respective rights and liabilities thereunder.

15. The Player and the Club acknowledge that they have read and are familiar with Section 35 of the Constitution of the Association, a copy of which, as in effect on the date of this Agreement, is attached hereto. Such section provides that the Commissioner and the Board of Governors of the

Association are empowered to impose fines upon the player and/or upon the Club for causes and in the manner provided in such section. The Player and the Club, each for himself and itself, promises promptly to pay to the said Association each and every fine imposed upon him or it in accordance with the provisions of said section and not permit any such fine to be paid on his or its behalf by anyone other than the person or club fined. The Player further authorizes the Club to deduct from his salary payments any fines imposed on or assessed against him.

16. Notwithstanding any provisions of the Constitution or of the By-Laws of the Association, it is agreed that if the Commissioner of the Association shall, in his sole judgment, find that the Player has bet, or has offered or attempted to bet, money or anything of value on the outcome of any game participated in by any club which is a member of the Association, the Commissioner shall have the power in his sole discretion to suspend the Player indefinitely or to expel him as a player for any member of the Association and the Commissioner's finding and decision shall be final, binding, conclusive and unappealable. The Player hereby releases the Commissioner and waives every claim he may have against the Commissioner and/or the Association, and against every member of the Association, and against every director, officer, stockholder, trustee and partner of every member of the Association, for damages and for all claims and demands whatsoever arising out of or in connection with the decision of the Commissioner.

17. The Player and the Club acknowledge and agree that the Player's participation in other sports may impair or destroy his ability and skill as a basketball player. The Player and the Club recognize and agree that the Player's participation in basketball out of season may result in injury to him. Accordingly, the Player agrees that he will not engage in professional boxing or wrestling; and that, except with the written consent of the Club, he will not engage in any game or exhibition of basketball, football, baseball, hockey, lacrosse, or other athletic sport, under penalty of such fine and suspension as may be imposed by the Club and/or the Commissioner of the Association. Nothing contained herein shall be intended to require the Player to obtain the written consent of the Club in order to enable the Player to participate in, as an amateur, the sport of golf, tennis, handball, swimming, hiking, softball or volleyball.

18. The Player agrees to allow the Club or the Association to take pictures of the Player, alone or together with others, for still photographs, motion pictures or television, at such times as the Club or the Association may designate, and no matter by whom taken may be used in any manner desired by either of them for publicity or promotional purposes. The rights in any such pictures taken by the Club or by the Association shall belong to the Club or to the Association, as their interests may appear. The Player agrees that, during the playing season, he will not make public appearances, participate in radio or television programs or permit his picture to be taken or write or sponsor newspaper or magazine articles or sponsor commercial products without the written consent of the Club, which shall not be withheld except in the reasonable interests of the Club or professional basketball. In addition to the foregoing, the Player agrees to participate, upon request, in all other reasonable promotional activities of the Club and the Association.

19. The Player agrees that he will not, during the term of this contract, directly or indirectly entice, induce, persuade or attempt to entice, induce or persuade any player or coach who is under contract to any member of the Association to enter into negotiations for or relating to his services as a basketball player or coach, nor shall he negotiate for or contract for such services, except with the prior written consent of such member of the Association. Breach of this paragraph, in addition to the remedies available to the Club, shall be punishable by fine to be imposed by the Commissioner of the Association and to be payable to the Association out of any compensation due or to become due to the Player hereunder or out of any other moneys payable to him as a basketball player. The Player agrees that the amount of such fine may be withheld by the Club and paid over to the Association.

20. (a) If the Club shall default in the payments to the Player provided for in paragraph 2 hereof or shall fail to perform any other material obligation agreed to be performed by the Club here-

under, the Player shall notify both the Club and the Association in writing of the facts constituting such default or failure. If neither the Club nor the Association shall cause such default or failure to be remedied within ten (10) days after receipt of such written notice, the Player shall have the right, by a further written notice to the Club and Association, to terminate this contract.

(b) The Club may terminate this contract upon written notice to the Player (but only after complying with the waiver procedure provided for in subparagraph (f) of this paragraph 20) if the Player shall do any of the following:

(1) at any time, fail, refuse or neglect to conform his personal conduct to standards of good citizenship, good moral character and good sportsmanship, to keep himself in first class physical condition or to obey the Club's training rules; or

(2) at any time, fail, in the sole opinion of the Club's management, to exhibit sufficient skill or competitive ability to qualify to continue as a member of the Club's team (provided, however, that if this contract is terminated by the Club, in accordance with the provisions of this subparagraph, during the period from December 2 through April 30 of any season, the Player shall be entitled to receive his full salary for said season); or

(3) at any time, fail, refuse or neglect to render his services hereunder or in any other manner materially breach this contract.

(c) If this contract is terminated by the Club by reason of the Player's failure to render his services hereunder due to disability resulting directly from injury sustained in the course and within the scope of his employment hereunder and written notice of such injury is given by the Player as provided herein, the Player shall be entitled to receive his full salary for the season in which the injury was sustained, less all workmen's compensation benefits and any insurance provided for by the Club paid or payable to the Player by reason of said injury.

(d) If this contract is terminated by the Club during the period designated by the Club for attendance at training camp, payment by the Club of the Player's board, lodging and expense allowance during such period to the date of termination and of the reasonable travelling expenses of the Player to his home city and the expert training and coaching provided by the Club to the Player during the training season shall be full payment to the Player.

(e) If this contract is terminated by the Club during the playing season, except in the case provided for in subparagraph (c) of this paragraph 20, the Player shall be entitled to receive as full payment hereunder a sum of money which, when added to the salary which he has already received during the season, will represent the same proportionate amount of the total sum set forth in paragraph 2 hereof as the number of days of the season then past bear to the total number of days of the schedule season, plus the reasonable travelling expenses of the Player to his home.

(f) If the Club proposes to terminate this contract in accordance with subparagraph (b) of this paragraph 20, the applicable waiver procedure shall be as follows:

(1) The Club shall request the Association Commissioner to request waivers from all other clubs. Such waiver request must state that it is for the purpose of terminating this contract and it may not be withdrawn.

(2) Upon receipt of the waiver request, any other club may claim assignment of this contract at such waiver price as may be fixed by the Association, the priority of claims to be determined in accordance with the Association's Constitution or By-Laws.

(3) If this contract is so claimed, the Club agrees that it shall, upon the assignment of this contract to the claiming club, notify the player of such assignment as provided in paragraph 12 hereof, and the Player agrees he shall report to the assignee club as provided in said paragraph 12.

(4) If the contract is not claimed, the Club shall promptly deliver written notice of termination to the Player at the expiration of the waiver period.

(5) To the extent not inconsistent with the foregoing provisions of this subparagraph (f) the waiver procedures set forth in the Constitution and By-Laws of the Association, a copy of which, as in effect on the date of this agreement, is attached hereto, shall govern.

(g) Upon any termination of this contract by the Player, all obligations of the Club to pay compensation shall cease on the date of termination, except the obligation of the Club to pay the Player's compensation to said date.

21. In the event of any dispute arising between the Player and the Club relating to any matter arising under this contract, or concerning the performance or interpretation thereof (except for a dispute arising under paragraph 9 hereof), such dispute shall be resolved in accordance with the Grievance and Arbitration Procedure set forth in the Agreement currently in effect between the National Basketball Association and the National Basketball Players Association.

22. On or before August 1 next following the last playing season covered by this contract and renewals and extensions thereof, the Club may tender to the Player a contract for the next succeeding season by mailing the same to the Player at his address shown below, or if none is shown, then at his address last known to the Club. If the Player fails, neglects or omits to sign and return such contract to the Club so that the Club receives it on or before September 1st next succeeding, then this contract shall be deemed renewed and extended for the period of one year, upon the same terms and conditions in all respects as are provided herein, except that the compensation payable to the Player shall be the sum provided in the contract tendered to the Player pursuant to the provisions hereof, which compensation shall in no event be less than the compensation payable to the Player for the last playing season covered by this contract and renewals and extensions thereof.

The Club's right to renew this contract, as herein provided, and the promise of the Player not to play otherwise than for the Club and its assignees, have been taken into consideration in determining the amount of compensation payable under paragraph 2 hereof.

23. Nothing contained in this agreement or in any provision of the Constitution or By-Laws of the Association shall be construed to constitute the Player a member of the Association or to confer upon him any of the rights or privileges of a member thereof.

24. This agreement contains the entire agreement between the parties and there are no oral or written inducements, promises or agreements except as contained herein.

EXAMINE THIS CONTRACT CAREFULLY BEFORE SIGNING IT

IN WITNESS WHEREOF the Player has hereunto signed his name and the Club has caused this contract to be executed by its duly authorized officer.

WITNESSES:

_____

_____

By_____
Title:

_____

_____
Player

Player's Address_____

EXCERPT FROM CONSTITUTION OF THE ASSOCIATION

MISCONDUCT OF OFFICIALS AND OTHERS

35. (a) The provisions of this Section shall govern all members, and officers, managers, coaches, players and other employees of a member, and all officials and other employees of the Association, all hereinafter referred to as "persons." Each member shall provide and require in every contract with any of its officers, managers, coaches, players or other employees that they shall be bound and governed by the provisions of this Section. Each member, at the direction of the Board of Governors or the Commissioner, as the case may be, shall take such action as the Board or the Commissioner may direct in order to effectuate the purposes of this Section.

(b) The Commissioner shall direct the dismissal and perpetual disqualification from any further association with the Association or any of its members, of any person found by the Commissioner after a hearing to have been guilty of offering, agreeing, conspiring, aiding or attempting to cause any game of basketball to result otherwise than on its merits.

(c) Any person who gives, makes, issues, authorizes or endorses any statement having, or designed to have, an effect prejudicial or detrimental to the best interests of basketball or of the Association or of a member or its team, shall be liable to a fine not exceeding $1,000, to be imposed by the Board of Governors. The member whose officer, manager, coach, player or other employee has been so fined shall pay the amount of the fine should such person fail to do so within ten (10) days of its imposition.

(d) If in the opinion of the Commissioner any other act or conduct of a person at or during a pre-season, championship, playoff or exhibition game has been prejudicial to or against the best interests of the Association or the game of basketball, the Commissioner shall impose upon such person a fine not exceeding $1,000 in the case of a member, officer, manager or coach of a member, or $500 in the case of a player or other employee, or may order for a time the suspension of any such person from any connection or duties with pre-season, championship, playoff or exhibition games, or he may order both such fine and suspension.

(e) The Commissioner shall have the power to suspend for a definite or indefinite period, or to impose a fine not exceeding $1,000, or inflict both such suspension and fine upon any person who, in his opinion, shall have been guilty of conduct prejudicial or detrimental to the Association.

(f) The Commissioner shall have the power to levy a fine of $1,000 upon any Governor or Alternate Governor who, in the opinion of the Commissioner, has been guilty of making statements to the press damaging to the Association.

(g) Any person who, directly or indirectly, entices, induces, persuades or attempts to entice, induce, or persuade any player, coach, trainer, general manager or any other person who is under contract to any other member of the Association to enter into negotiations for or relating to his services or negotiates or contracts for such services shall, on being charged with such tampering, be given an opportunity to answer such charges after due notice and the Commissioner shall have the power to decide whether or not the charges have been sustained; in the event his decision is that the charges have been sustained, then the Commissioner shall have the power to suspend such person for a definite or indefinite period, or to impose a fine not exceeding $5,000, or inflict both such suspension and fine upon any such person.

(h) Any person who, directly or indirectly, wagers money or anything of value on the outcome of any game played by a team in the league operated by the Association shall, on being charged with such wagering, be given an opportunity to answer such charges after due notice, and the decision of the Commissioner shall be final, binding and conclusive and unappealable. The penalty for such offense shall be within the absolute and sole discretion of the Commissioner and may include a fine, suspension, expulsion and/or perpetual disqualification from further association with the Association or any of its members.

(i) Except for a penalty imposed under subparagraph (h) of this paragraph 35, the decisions and acts of the Commissioner pursuant to paragraph 35 shall be appealable to the Board of Governors who shall determine such appeals in accordance with such rules and regulations as may be adopted by the Board in its absolute and sole discretion.

EXCERPT FROM BY-LAWS OF THE ASSOCIATION

3.07 *Waiver Right.* Except for sales and trading between Members in accordance with these By-Laws, no Member shall sell, option or otherwise transfer the contract with, right to the services of, or right to negotiate with, a Player without complying with the waiver procedure prescribed by these By-Laws.

3.08 *Waiver Price.* The waiver price shall be $1,000 per Player.

3.09 *Waiver Procedure.* A Member desiring to secure waivers on a Player shall notify the Commissioner, and the Commissioner, on behalf of such Member, shall immediately notify all other Members of the waiver request. Such Player shall be assumed to have been waived unless a Member shall timely notify the Commissioner by telegram and telephone of a claim to the rights of such Player. Once a Member has notified the Commissioner to attempt to secure waivers on a Player, such notice may not be withdrawn. A Player remains the financial responsibility of the Member placing him on waivers until the waiver period set by the Commissioner has expired.

3.10 *Waiver Period.* If the Commissioner distributes notice of request for waiver at any time during the Season or within four weeks before the beginning of the Season, any Members wishing to claim rights to the Player shall do so by giving notice by telephone and telegram of such claim to the Commissioner within 48 hours after the time of the Commissioner's notice. If the Commissioner distributes notice of request for waiver at any other time, any Member wishing to claim rights to the Player shall do so by sending notice of such Claim to the Commissioner within ten days after the date of the Commissioner's notice. A team may not withdraw a claim to the rights to a Player on waivers.

3.11 *Waiver Preferences.* In the event that more than one Member shall have claimed rights to a Player placed on waivers, the claiming Member with the lowest team standing at the time the waiver was requested shall be entitled to acquire the rights to such Player. If the request for waiver shall occur between Seasons or prior to midnight November 30th, the standings at the close of the previous Season shall govern.

If the won and lost percentages of two claiming Teams are the same, then the tie shall be determined, if possible, on the basis of the Championship Games between the two teams, during the Season or during the preceding Season, as the case may be. If still tied, a toss of the coin shall determine priority. For the purpose of determining standings, both conferences of the Association shall be deemed merged and a consolidated standing shall control.

3.12 *Players Acquired Through Waivers.* A Member who has acquired the rights and title to the contract of a player through the waiver procedure may not sell, trade or waive such rights for a period of 30 days after the acquisition thereof, provided, however, that if the rights to such Player were acquired between Seasons, the 30 day period described herein shall begin on the first day of the next succeeding Season.

3.13 *Additional Waiver Rules.* The Commissioner or the Board of Governors shall from time to time adopt such additional rules (supplementary to these By-Laws) with respect to the operation of the waiver procedures as he or it shall determine. Such rules shall not be inconsistent with these By-Laws and shall apply to but shall not be limited to the mechanics of notice, inadvertent omission of notification to a Member and rules of cor[illegible] to time.

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NATIONAL BASKETBALL ASSOCIATION

UNIFORM PLAYER CONTRACT

(For Use When Contract Is For More Than A Single Season)

THIS AGREEMENT made this ..... day of ....., 19..... by and between ..... (hereinafter called the "Club"), a member of the National Basketball Association (hereinafter called the "Association") and ..... whose address is shown below (hereinafter called the "Player").

WITNESSETH:

In consideration of the mutual promises hereinafter contained, the parties hereto promise and agree as follows:

1. The Club hereby employs the Player as a skilled basketball player for a term of ..... year(s) from 1st day of September 19..... The Player's employment during each year covered by this contract shall include attendance at each training camp, playing the games scheduled for the Club's team during each schedule season of the Association, playing all exhibition games scheduled by the Club during and prior to each schedule season, playing (if invited to participate) in each of the Association's All-Star Games and attending every event (including, but not limited to, the All-Star Game luncheon and/or banquet) conducted in association with such All-Star Games, and playing the playoff games subsequent to each schedule season. Players other than rookies will not be required to attend training camp earlier than four weeks prior to the first game of each of the Association's schedule seasons. Rookies may be required to attend training camp at an earlier date. Exhibition games shall not be played on the three days prior to the opening of the Club's regular season schedule, nor on the day prior to a regularly scheduled game, nor on the day prior to and the day following the All Star Game. Exhibition games prior to each schedule season shall not exceed eight (including intra-squad games for which admission is charged) and exhibition games during each regularly scheduled season shall not exceed three.

2. The Club agrees to pay the Player for rendering services described herein the sum of $....., per year, (less all amounts required to be withheld from salary by Federal, State and local authorities and exclusive of any amount which the Player shall be entitled to receive from the Player Playoff Pool) in twelve equal semi-monthly payments beginning with the first of said payments on November 1st of each season above described and continuing with such payments on the first and fifteenth of each month until said sum is paid in full; provided however, if the Club does not qualify for the playoffs, the payments for the year involved which would otherwise be due subsequent to the conclusion of the schedule season shall become due and payable immediately after the conclusion of the schedule season.

3. The Club agrees to pay all proper and necessary expenses of the Player, including the reasonable board and lodging expenses of the Player while playing for the Club "on the road" and during training camp if the Player is not then living at home. The Player, while "on the road" (and at training camp only if the Club does not pay for meals directly) shall be paid $19.00 per day as meal expense allowance in accordance with the following schedule: breakfast $3.00; lunch $6.00; dinner $10.00. No deductions shall be made for meals served on an airplane. While the Player is at training camp (and if the Club does not pay for meals directly), the meal expense allowance shall be paid in weekly installments commencing with the first week of training camp. For the purposes of this paragraph, the Player shall be

considered to be "on the road" from the time the Club leaves its home city until the time the Club arrives back at its home city. In addition, the Club agrees ot pay $50.00 per week to the Player for the four weeks prior to the first game of each of the Association's schedule seasons that the Player is either in attendance at training camp or engaged in playing the exhibition schedule.

4. The Player agrees to observe and comply with all requirements of the Club respecting conduct of its team and its players, at all times whether on or off the playing floor. The Club may, from time to time during the continuance of this contract, establish reasonable rules for the government of its players "at home" and "on the road", and such rules shall be part of this contract as fully as if herein written and shall be binding upon the Player; for any violation of such rules or for any conduct impairing the faithful and thorough discharge of the duties incumbent upon the Player, the Club may impose reasonable fines upon the Player and deduct the amount thereof from any money due or to become due to the Player. The Club may also suspend the Player for violation of any rules so established, and during such suspension the Player shall not be entitled to any compensation under this contract. When the Player is fined or suspended, he shall be given notice in writing, stating the amount of the fine or the duration of the suspension and the reason therefor. Disputes under this paragraph shall be resolved in the manner provided for in paragraph 21 hereof.

5. The Player agrees (a) to report at the time and place fixed by the Club in good physical condition; (b) to keep himself throughout each season in good physical condition; (c) to give his best services, as well as his loyalty to the Club, and to play basketball only for the Club and its assignees; (d) to be neatly and fully attired in public and always to conduct himself on and off the court according to the highest standards of honesty, morality, fair play and sportsmanship; and (e) not to do anything which is detrimental to the best interests of the Club or of the Association.

6. If the Player, in the sole judgment of the physician designated for that purpose by the Club, is not in good physical condition at the date of his first scheduled game for the Club, or if, at the beginning of or during any season, he fails to remain in good physical condition, unless such condition results directly from playing basketball for the Club, so as to render him, in the sole judgment of the Club's physician, unfit to play skilled basketball, the Club shall have the right to suspend such Player until such time as, in the sole judgment of the Club's physician, the Player is in sufficiently good physical condition to play skilled basketball, and in the event of such suspension, the annual sum payable to the Player for each season during such suspension shall be reduced in the same proportion as the length of the period of disability during such season during which, in the sole judgment of the Club's physician, the Player is unfit to play skilled basketball, bears to the length of such season. If the Player is injured as a direct result of participating in any basketball practice or game played for the Club, the Club will pay the Player's reasonable hospitalization until he is discharged from the hospital and his reasonable medical expenses and doctor's bills, provided the hospital and the doctor are selected by the Club, and provided further, that the Club's obligation to pay said medical expenses and said doctor's bills shall terminate at a period not exceeding eight (8) weeks after the injury. If, in the sole judgment of the physician designated for that purpose by the Club, the Player's injuries resulted directly from playing for the Club and render him unfit to play skilled basketball, then, so long as such unfitness continues, but in no event after the Player has received his full salary for the season in which the injury was sustained, the Club shall pay to the Player the compensation prescribed in paragraph 2 of this agreement for such season. The Club's obligations hereunder shall be reduced by any workmen's compensation benefits and any insurance provided for by the Club whether paid or payable to the Player, and the Player hereby releases the Club from any and every other obligation or liability arising out of any such injuries.

7. The Player agrees to give to the Club's coach, or to the Club's physician, immediate notice of any injury suffered by him, including the time, place, cause and nature of such injury.

8. Should the Player become disabled as provided in the preceding section, he will submit himself to a medical examination and treatment by a physician designated by the Club. Such examination when made at the request of the Club shall be at its expense, unless made necessary by some act or conduct of the Player contrary to the terms of this contract.

9. The Player represents and agrees that he has extraordinary and unique skill and ability as a basketball player, that the services to be rendered by him hereunder cannot be replaced or the loss thereof adequately compensated for in money damages, and that any breach by the Player of this contract will cause irreparable injury to the Club and to its assignees. Therefore, it is agreed that in the event it is alleged by the Club that the Player is playing, attempting or threatening to play, or negotiating for the purpose of playing, during the term of this contract, for any other person, firm, corporation or organization, the Club and its assignees (in addition to any other remedies that may be available to them judicially or by way of arbitration) shall have the right to obtain from any court or arbitrator having jurisdiction, such equitable relief as may be appropriate, including a decree enjoining the Player from any further such breach of this contract, and enjoining the Player from playing basketball for any other person, firm, corporation or organization during the term of this contract. In any suit, action or arbitration proceeding brought to obtain such relief, the Player does hereby waive his right, if any, to trial by jury, and does hereby waive his right, if any, to interpose any counterclaim or set-off for any cause whatever.

10. The Club shall have the right to sell, exchange, assign or transfer this contract to any other professional basketball club and the Player agrees to accept such sale, exchange, assignment or transfer and to faithfully perform and carry out this contract with the same force and effect as if it had been entered into by the Player with the assignee club instead of with this Club.

11. In the event that the Player's contract is sold, exchanged, assigned or transferred to any other professional basketball club, all reasonable expenses incurred by the Player in moving himself and his family from the home city of the Cub to the home city of the club to which such sale, exchange, assignment or transfer is made, as a result thereof, shall be paid by the assignee club. Such assignee club hereby agrees that its acceptance of the assignment of this contract constitutes agreement on its part to make such payment.

12. In the event that the Player's contract is assigned to another club the Player shall forthwith be notified orally or by a notice in writing, delivered to the Player personally or delivered or mailed to his last known address, and the Player shall report to the assignee club within forty-eight hours after said notice has been received or within such longer time for reporting as may be specified in said notice. If the Player does not report to the club to which his contract has been assigned within the aforesaid time, the Player may be suspended by such club and he shall lose the sums which would otherwise be payable to him as long as the suspension lasts.

13. The Club will not pay and the Player will not accept any bonus or anything of value for winning any particular Association game or series of games or for attaining a certain position by the Club's team in the standing of the league operated by the Association as of a certain date, other than the final standing of the team.

14. This contract shall be valid and binding upon the Club and the Player immediately upon its execution. The Club agrees to file a copy of this contract with the Commissioner of the Association prior to the first game of the schedule season or within forty-eight (48) hours of its execution, whichever is later; provided, however, the Club agrees that if the contract is executed prior to the start of the schedule season and if the Player so requests, it will file a copy of this contract with the Commissioner of the Association within thirty (30) days of its execution, but not later than the date hereinabove specified. If pursuant to the Constitution and By-Laws the Commissioner disapproves this contract within ten (10) days after the filing thereof in his office, this contract shall thereupon terminate and be of no further force or effect and the Club and the Player thereupon be relieved of their respective rights and liabilities thereunder.

15. The Player and the Club acknowledge that they have read and are familiar with Section 35 of the Constitution of the Association, a copy of which, as in effect on the date of this Agreement,

is attached hereto. Such section provides that the Commissioner and the Board of Governors of the Association are empowered to impose fines upon the player and/or upon the Club for causes and in the manner provided in such section. The Player and the Club, each for himself and itself, promises promptly to pay to the said Association each and every fine imposed upon him or it in accordance with the provisions of said section and not permit any such fine to be paid on his or its behalf by anyone other than the person or club fined. The Player authorizes the Club to deduct from his salary payments any fines imposed on or assessed against him.

16. Notwithstanding any provisions of the Constitution or of the By-Laws of the Association, it is agreed that if the Commissioner of the Association shall, in his sole judgment, find that the Player has bet, or has offered or attempted to bet, money or anything of value on the outcome of any game participated in by any club which is a member of the Association, the Commissioner shall have the power in his sole discretion to suspend the Player indefinitely or to expel him as a player for any member of the Association and the Commissioner's finding and decision shall be final, binding, conclusive and unappealable. The Player hereby releases the Commissioner and waives every claim he may have against the Commissioner and/or the Association, and against every member of the Association, and against every director, officer, stockholder, trustee and partner of every member of the Association, for damages and for all claims and demands whatsoever arising out of or in connection with the decision of the Commissioner.

17. The Player and the Club acknowledge and agree that the Player's participation in other sports may impair or destroy his ability and skill as a basketball player. The Player and the Club recognize and agree that the Player's participation in basketball out of season may result in injury to him. Accordingly, the Player agrees that he will not engage in professional boxing or wrestling; and that, except with the written consent of the Club, he will not engage in any game or exhibition of basketball, football, baseball, hockey, lacrosse, or other athletic sport, under penalty of such fine and suspension as may be imposed by the Club and/or the Commissioner of the Association. Nothing contained herein shall be intended to require the Player to obtain the written consent of the Club in order to enable the Player to participate in, as an amateur, the sport of golf, tennis, handball, swimming, hiking, softball or volleyball.

18. The Player agrees to allow the Club or the Association to take pictures of the Player, alone or together with others, for still photographs, motion pictures or television, at such times as the Club or the Association may designate, and no matter by whom taken may be used in any manner desired by either of them for publicity or promotional purposes. The rights in any such pictures taken by the Club or by the Association shall belong to the Club or to the Association, as their interests may appear. The Player agrees that, during each playing season, he will not make public appearances, participate in radio or television programs or permit his picture to be taken or write or sponsor newspaper or magazine articles or sponsor commercial products without the written consent of the Club, which shall not be withheld except in the reasonable interests of the Club or professional basketball. In addition to the foregoing, the Player agrees to participate, upon request, in all other reasonable promotional activities of the Club and the Association.

19. The Player agrees that he will not, during the term of this contract, directly or indirectly entice, induce, persuade or attempt to entice, induce or persuade any player or coach who is under contract to any member of the Association to enter into negotiations for or relating to his services as a basketball player or coach, nor shall he negotiate for or contract for such services, except with the prior written consent of such member of the Association. Breach of this paragraph, in addition to the remedies available to the Club, shall be punishable by fine to be imposed by the Commissioner of the Association and to be payable to the Association out of any compensation due or to become due to the Player hereunder or out of any other moneys payable to him as a basketball player. The Player agrees that the amount of such fine may be withheld by the Club and paid over to the Association.

20. (a) If the Club shall default in the payments to the Player provided for in paragraph 2 hereof or shall fail to perform any other material obligation agreed to be performed by the Club here-

under, the Player shall notify both the Club and the Association in writing of the facts constituting such default or failure. If neither the Club nor the Association shall cause such default or failure to be remedied within ten (10) days after receipt of such written notice, the Player shall have the right, by a further written notice to the Club and Association, to terminate this contract.

(b) The Club may terminate this contract upon written notice to the Player (but only after complying with the waiver procedure provided for in subparagraph (f) of this paragraph (20) if the Player shall do any of the following:

(1) at any time, fail, refuse or neglect to conform his personal conduct to standards of good citizenship, good moral character and good sportsmanship, to keep himself in first class physical condition or to obey the Club's training rules; or

(2) at any time, fail, in the sole opinion of the Club's management, to exhibit sufficient skill or competitive ability to qualify to continue as a member of the Club's team (provided, however, that if this contract is terminated by the Club, in accordance with the provisions of this subparagraph, during the period from December 2 through April 30 of any season, the Player shall be entitled to receive his full salary for said season); or

(3) at any time, fail, refuse or neglect to render his services hereunder or in any other manner materially breach this contract.

(c) If this contract is terminated by the Club by reason of the Player's failure to render his services hereunder due to disability resulting directly from injury sustained in the course and within the scope of his employment hereunder and written notice of such injury is given by the Player as provided herein, the Player shall be entitled to receive his full salary for the season in which the injury was sustained, less all workmen's compensation benefits and any insurance provided for by the Club paid or payable to the Player by reason of said injury.

(d) If this contract is terminated by the Club during the period designated by the Club for attendance at training camp, payment by the Club of the Player's board, lodging and expense allowance during such period to the date of termination and of the reasonable travelling expenses of the Player to his home city and the expert training and coaching provided by the Club to the Player during the training season shall be full payment to the Pla[illegible]

(e) If this contract is terminated by the Club during any playing season, except in the case provided for in subparagraph (c) of this paragraph 20, the Player shall be entitled to receive as full payment hereunder a sum of money which, when added to the salary which he has already received during such season, will represent the same proportionate amount of the annual sum set forth in paragraph 2 hereof as the number of days of such season then past bears to the total number of days of such schedule season, plus the reasonable travelling expenses of the Player to his home.

(f) If the Club proposes to terminate this contract in accordance with subparagraph (b) of this paragraph 20, the applicable waiver procedure shall be as follows:

(1) The Club shall request the Association Commissioner to request waivers from all other clubs. Such waiver request must state that it is for the purpose of terminating this contract and it may not be withdrawn.

(2) Upon receipt of the waiver request, any other club may claim assignment of this contract at such waiver price as may be fixed by the Association, the priority of claims to be determined in accordance with the Association's Constitution or By-Laws.

(3) If this contract is so claimed, the Club agrees that it shall, upon the assignment of this contract to the claiming club, notify the player of such assignment as provided in paragraph 12 hereof, and the Player agrees he shall report to the assignee club as provided in said paragraph 12.

(4) If the contract is not claimed, the Club shall promptly deliver written notice of termination to the Player at the expiration of the waiver period.

(5) To the extent not inconsistent with the foregoing provisions of this subparagraph (f) the waiver procedures set forth in the Constitution and By-Laws of the Association, a copy of which, as in effect on the date of this agreement, is attached hereto, shall govern.

(g) Upon any termination of this contract by the Player, all obligations of the Club to pay compensation shall cease on the date of termination, except the obligation of the Club to pay the Player's compensation to said date.

21. In the event of any dispute arising between the Player and the Club relating to any matter arising under this contract, or concerning the performance or interpretation thereof (except for a dispute arising under paragraph 9 hereof), such dispute shall be resolved in accordance with the Grievance and Arbitration Procedure set forth in the Agreement currently in effect between the National Basketball Association and the National Basketball Players Association.

22. On or before August 1 next following the last playing season covered by this contract and renewals and extensions thereof, the Club may tender to the Player a contract for the next succeeding season by mailing the same to the Player at his address shown below, or if none is shown, then at his address last known to the Club. If the Player fails, neglects or omits to sign and return such contract to the Club so that the Club receives it on or before September 1st next succeeding, then this contract shall be deemed renewed and extended for the period of one year, upon the same terms and conditions in all respects as are provided herein, except that the compensation payable to the Player shall be the sum provided in the contract tendered to the Player pursuant to the provisions hereof, which compensation shall in no event be less than the compensation payable to the Player for the last playing season covered by this contract and renewals and extensions thereof.

The Club's right to renew this contract, as herein provided, and the promise of the Player not to play otherwise than for the Club and its assignees, have been taken into consideration in determining the amount of compensation payable under paragraph 2 hereof.

23. Nothing contained in this agreement or in any provision of the Constitution or By-Laws of the Association shall be construed to constitute the Player a member of the Association or to confer upon him any of the rights or privileges of a member thereof.

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24. This agreement contains the entire agreement between the parties and there are no oral or written inducements, promises or agreements except as contained herein.

EXAMINE THIS CONTRACT CAREFULLY BEFORE SIGNING IT

IN WITNESS WHEREOF the Player has hereunto signed his name and the Club has caused this contract to be executed by its duly authorized officer.

WITNESSES:

_____

_____

By_____
Title:

_____

_____
Player

Player's Address_____

EXCERPT FROM CONSTITUTION OF THE ASSOCIATION

1005

MISCONDUCT OF OFFICIALS AND OTHERS

35. (a) The provisions of this Section shall govern all members, and officers, managers, coaches, players and other employees of a member and all officials and other employees of the Association, all hereinafter referred to as "persons." Each member shall provide and require in every contract with any of its officers, managers, coaches, players or other employees that they shall be bound and governed by the provisions of this Section. Each member, at the direction of the Board of Governors or the Commissioner, as the case may be, shall take such action as the Board or the Commissioner may direct in order to effectuate the purposes of this Section.

(b) The Commissioner shall direct the dismissal and perpetual disqualification from any further association with the Association or any of its members, of any person found by the Commissioner after a hearing to have been guilty of offering, agreeing, conspiring, aiding or attempting to cause any game of basketball to result otherwise than on its merits.

(c) Any person who gives, makes, issues, authorizes or endorses any statement having, or designed to have, an effect prejudicial or detrimental to the best interests of basketball or of the Association or of a member or its team, shall be liable to a fine not exceeding $1,000, to be imposed by the Board of Governors. The member whose officer, manager, coach, player or other employee has been so fined shall pay the amount of the fine should such person fail to do so within ten (10) days of its imposition.

(d) If in the opinion of the Commissioner any other act or conduct of a person at or during a pre-season, championship, playoff or exhibition game has been prejudicial to or against the best interests of the Association or the game of basketball, the Commissioner shall impose upon such person a fine not exceeding $1,000 in the case of a member, officer, manager or coach of a member, or $500 in the case of a player or other employee, or may order for a time the suspension of any such person from any connection or duties with pre-season, championship, playoff or exhibition games, or he may order both such fine and suspension.

(e) The Commissioner shall have the power to suspend for a definite or indefinite period, or to impose a fine not exceeding $1,000, or inflict both such suspension and fine upon any person who, in his opinion, shall have been guilty of conduct prejudicial or detrimental to the Association.

(f) The Commissioner shall have the power to levy a fine of $1,000 upon any Governor or Alternate Governor who, in the opinion of the Commissioner, has been guilty of making statements to the press damaging to the Association.

(g) Any person who, directly or indirectly, entices, induces, persuades or attempts to entice, induce, or persuade any player, coach, trainer, general manager or any other person who is under contract to any other member of the Association to enter into negotiations for or relating to his services or negotiates or contracts for such services shall, on being charged with such tampering, be given an opportunity to answer such charges after due notice and the Commissioner shall have the power to decide whether or not the charges have been sustained; in the event his decision is that the charges have been sustained, then the Commissioner shall have the power to suspend such person for a definite or indefinite period, or to impose a fine not exceeding $5,000, or inflict both such suspension and fine upon any such person.

(h) Any person who, directly or indirectly, wagers money or anything of value on the outcome of any game played by a team in the League operated by the Association shall, on being charged with such wagering, be given an opportunity to answer such charges after due notice, and the decision of the Commissioner shall be final, binding and conclusive and unappealable. The penalty for such offense shall be within the absolute and sole discretion of the Commissioner and may include a fine, suspension, expulsion and/or perpetual disqualification from further association with the Association or any of its members.

(i) Except for a penalty imposed under subparagraph (h) of this paragraph 35, the decisions and acts of the Commissioner pursuant to paragraph 35 shall be appealable to the Board of Governors who shall determine such appeals in accordance with such rules and regulations as may be adopted by the Board in its absolute and sole discretion.

EXCERPT FROM BY-LAWS OF THE ASSOCIATION

3.07 *Waiver Right.* Except for sales and trading between Members in accordance with these By-Laws, no Member shall sell, option or otherwise transfer the contract with, right to the services of, or right to negotiate with, a Player without complying with the waiver procedure prescribed by these By-Laws.

3.08 *Waiver Price.* The waiver price shall be $1,000 per Player.

3.09 *Waiver Procedure.* A Member desiring to secure waivers on a Player shall notify the Commissioner, and the Commissioner, on behalf of such Member, shall immediately notify all other Members of the waiver request. Such Player shall be assumed to have been waived unless a Member shall timely notify the Commissioner by telegram and telephone of a claim to the rights of such Player. Once a Member has notified the Commissioner to attempt to secure waivers on a Player, such notice may not be withdrawn. A Player remains the financial responsibility of the Member placing him on waivers until the waiver period set by the Commissioner has expired.

3.10 *Waiver Period.* If the Commissioner distributes notice of request for waiver at any time during the Season or within four weeks before the beginning of the Season, any Members wishing to claim rights to the Player shall do so by giving notice by telephone and telegram of such claim to the Commissioner within 48 hours after the time of the Commissioner's notice. If the Commissioner distributes notice of request for waiver at any other time, any Member wishing to claim rights to the Player shall do so by sending notice of such Claim to the Commissioner within ten days after the date of the Commissioner's notice. A team may not withdraw a claim to the rights to a Player on waivers.

3.11 *Waiver Preferences.* In the event that more than one Member shall have claimed rights to a Player placed on waivers, the claiming Member with the lowest team standing at the time the waiver was requested shall be entitled to acquire the rights to such Player. If the request for waiver shall occur between Seasons or prior to midnight November 30th, the standings at the close of the previous Season shall govern.

If the won and lost percentages of two claiming Teams are the same, then the tie shall be determined, if possible, on the basis of the Championship Games between the two teams, during the Season or during the preceding Season, as the case may be. If still tied, a toss of the coin shall determine priority. For the purpose of determining standings, both conferences of the Association shall be deemed merged and a consolidated standing shall control.

3.12 *Players Acquired Through Waivers.* A Member who has acquired the rights and title to the contract of a player through the waiver procedure may not sell, trade or waive such rights for a period of 30 days after the acquisition thereof, provided, however, that if the rights to such Player were acquired between Seasons, the 30 day period described herein shall begin on the first day of the next succeeding Season.

3.13 *Additional Waiver Rules.* The Commissioner or the Board of Governors shall from time to time adopt such additional rules (supplementary to these By-Laws) with respect to the operation of the waiver procedures as he or it shall determine. Such rules shall not be inconsistent with these By-Laws and shall apply to but shall not be limited to the mechanics of notice, inadvertent omission of notification to a Member and rules of construction as to time.

CONSTITUTION

and

BY-LAWS

of

THE NATIONAL BASKETBALL ASSOCIATION

As in Effect on December 11, 1973
and Subsequently Amended

1201

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CONSTITUTION

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OBJECTS

n is organized to operate a league consisting
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CHAMPIONSHIP

e operated by the Association shall be divided
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Midwest and Pacific Divisions shall comprise
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of any season by a two-thirds vote of the

r suspends operations during a season, the
t by its team during that season prior to the
count in the records of the other teams.

LIGATIONS OF MEMBERS

ution constitutes a contract among the mem-
ation. Each member of the Association shall

hold a franchise to organize and operate a professional basketball team which shall play in the league operated by the Association. The Association and each of its members shall be governed by the Constitution and By-Laws, as they may be modified, amended or added to from time to time.

CONFLICTS OF INTEREST

5. (a) A member shall not exercise control, directly or indirectly, over any other member of the Association.

(b) A member shall not, directly or indirectly, lend money to or become surety or guarantor for a player of any other member of the Association or any referee or official of the Association.

(c) Neither the Commissioner nor any referee or any employee of the Association shall, directly or indirectly, hold stock or have a financial interest in any member or lend money to or become surety or guarantor for any member.

(d) An individual, partnership or corporation having a substantial direct or indirect financial interest in any member shall not hold in any capacity whatsoever a substantial direct or indirect financial interest in any other member, unless all the facts in connection with such additional interest are disclosed in detail to the Board of Governors and such additional interest is approved by a three-fourths vote of all the Governors.

(e) A member, or any "person" e.g. owner, officer, stockholder or partner shall not hold any substantial financial interest or executive position in any other professional basketball association or league, or in any member or team thereof.

APPLICATION FOR MEMBERSHIP

6. (A) Each applicant for membership shall make a written application to the Commissioner. Such application shall describe the type of organization and shall designate the city in which the

franchise of the applicant shall be located; such application shall further describe and contain the following information:

(1) The names and addresses of all persons who do or shall own any interest or stock in the applicant, together with a statement that such persons will not own or hold such interest or stock for the benefit of any undisclosed person or organization.

(2) A detailed balance sheet of such company as of the date of organization and a pro forma statement as of the time it shall commence actual operation. A written financial statement shall be required from the applicant and from anyone owning an interest in any applicant, including stockholders and partners.

(3) If applicant is a corporation, a certified copy of the Articles of Incorporation, By-Laws and share certificate shall accompany such application provided, however, if the organization of such corporation has not been commenced or completed a detailed statement summarizing the proposed plan of operation and the capital structure thereof shall be furnished.

(4) If applicant is partnership, unincorporated association or other entity, a certified copy of the Articles of Co-Partnership or Organization Agreement shall accompany such application.

(5) The names and addresses of all officers and directors.

(6) All applications shall contain a representation that upon acceptance, the applicant will subscribe to and agree to be bound by the Constitution, By-Laws, rules and regulations of the Association and any amendments or modifications thereof.

(B) Each application for membership shall be accompanied by a certified check for one hundred thousand dollars ($100,000.00). If any application for admission is rejected, the Association shall

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repay to the applicant the sum of one hundred thousand dollars ($100,000) paid by the applicant at the time of such application, less all expenses reasonably incurred in connection with the consideration and investigation of such application. If the applicant fails to meet the financial obligations agreed upon within thirty (30) days after approval of application for membership by the Board of Governors, the original deposit of $100,000 is non-refundable.

(C) Upon receipt of any application for membership in the Association, the Commissioner shall conduct such investigation t of as he deems appropriate. Following the completion of such investigation, the Commissioner shall submit the application to the members for approval together with his recommendation thereon, and such information thereon that the Commissioner deems pertinent. Each proposed owner or holder of any interest in a membership, including stockholders in any corporation, members of a partnership and all other persons holding any interest in the applicant must be individually approved by the affirmative vote of not less than three-fourths of all of its members at a meeting duly warned for such purpose.

TRANSFER OF MEMBERSHIP

7. No membership, or any substantial interest therein, may be assigned or otherwise transferred in whole or in part except in accordance with and subject to the following provisions:

(A) Application for the sale, transfer, or assignment of a membership or of any interest therein, must be made in writing to the Commissioner; upon receipt of such application, the Commissioner is empowered to require from applicant and applicant shall furnish such information as the Commissioner deems appropriate, including:

(1) The names and addresses of each of the buyers, transferees or assignees thereof.

(2) The price to be paid for such sale, transfer or assignment, and the terms of payment, including a description of the security for any unpaid balance, if any.

(3) A banking reference for each buyer, transferee or assignee.

(4) If the buyer, transferee or assignee is a corporation, a copy of the Articles of Incorporation and By-Laws thereof, together with a copy of the share certificate of each class of stock to be outstanding, the names and addresses of the directors and officers thereof, the names and addresses of the stockholders therein and the price paid or to be paid and the time of payment for said stock, a copy of any proposed voting trust agreement and of any voting trust certificates.

(B) Upon receipt thereof, the Commissioner shall conduct such investigation as he deems appropriate. Upon the completion thereof, the Commissioner shall submit the proposed transfer to the members for approval, together with his recommendations thereon, and all information in respect thereto that the Commissioner deems pertinent. All sales, transfers or assignments shall only become effective if approved by the affirmative vote of not less than three-fourths of all its members at a meeting duly warned for such purpose.

(C) For the purpose of this paragraph 7, an interest of ten percent (10%) or more shall be deemed a substantial interest in a member. Furthermore, regardless of the size of the interest transferred, a transfer of the ownership of any interest in a member shall be deemed a transfer of the entire membership in the Association if the effect of the transfer of such interest is or may be to change the ownership of effective control of a member.

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OPERATING LEASE

8. A member may directly operate a basketball team in the league operated by the Association or may lease out the privilege of operating such a team with the approval of three-fourths of all the members of the Board of Governors of the Association given at a meeting duly warned for such purpose. The lessee under any such lease shall operate such team subject to the Constitution, By-Laws and rules of the Association.

TERRITORIAL RESTRICTIONS

9. A membership shall not be granted or transferred for operation within the territory of any member without the prior written consent of such member. Anything herein contained to the contrary notwithstanding, this provision as to territorial restrictions may be amended only with the consent of all of the members of the Association.

TERRITORY

10. (a) Except as provided in paragraphs (b) and (c) of this paragraph 10, the territory of a member shall be the territory incorporated within an area of 75 air miles of the corporate limits of the city of operation, except that when the line circumscribing the territory of a member intersects with the line circumscribing the territory of another member, the respective territories shall be evenly divided by a line between the two points of intersection.

(b) Notwithstanding the provisions of (a) of this paragraph 10, the territory of the respective holders of the New York and Philadelphia franchises shall be the territory incorporated within an area of 75 air miles of the corporate limits of those two cities, except as the limits of these territories have been modified by the provisions of a certain written agreement heretofore made by the holders of the New York and Philadelphia franchises.

(c) A team operated by a member shall have no right to play in the territory of another member without the consent of the resident member.

(d) In addition to the territorial rights above provided, a member shall have priority within the corporate limits of any city in which its team has played not less than three home Championship Games during the preceding Season. Such priority shall continue so long as such member's team continues to play not less than three home Championship Games in such city in each succeeding consecutive Season, provided, however, that the Commissioner, in his discretion, may, by written notice to each of the members of the Association, excuse the failure of the team of any member to play such minimum number of games in such city in any one Season, in which event, such member's priority in such city shall continue notwithstanding its team's failure to play such minimum number of games in such city during such Season. "Priority", as used in this paragraph (d) means a preference granted to schedule and play home Championship Games and home pre-season Exhibition Games within the corporate limits of such city.

RESIGNATION OF MEMBER

11. A member may resign from the Association at the end of any season provided written notice of such resignation shall have been given to the Commissioner and other members of the Association at least three (3) calendar days prior to the commencement of that season's college draft. However, such resignation shall be effective only if, within thirty (30) days of such notice, the resigning member shall have (a) made full payment of all dues or other debts owing to the Association or its members (b) assigned to the Commissioner of the Association the contracts of its players; (c) assigned to the Commissioner the lease held on its playing floor, if assignable; and (d) assigned to the Commissioner of the Association all rights as such members may have or claim

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to have to the funds and property rights of the Association. The Commissioner of the Association shall have the power to deal with and dispose of such contracts, lease and rights as if said member had suffered an event described in paragraph 12 hereof. Upon the effective date of such resignation, the resigning member shall hold no further interest in its membership and such membership shall cease and terminate.

AUTOMATIC TERMINATION OF MEMBERSHIP

12. In the event that a member of the Association is adjudic ' a bankrupt, or makes an assignment for the benefit of creditors, or a receiver or trustee is appointed for all or a substantial part of the property or assets of such member, or a court assumes jurisdiction over all or a substantial part of the property or assets of such member in any insolvency, bankruptcy or reorganization proceeding, then, and upon the happening of any one of such events, the membership of such member with the players of the team operated by it shall automatically vest in the Commissioner of the Association who shall have the power to appoint a person, who may be a Governor of the Association or an officer or employee of a member of the Association, to take title to such player contracts and to operate, deal with and dispose of them, subject to the direction of the Commissioner and the Board of Governors.

SUSPENSION OR TERMINATION OF OWNERSHIP OR MEMBERSHIP

13. The membership of a member or the interest of any "person" e.g., owner, officer, stockholder, partner, or anyone holding any interest herein, shall be suspended or terminated or otherwise diluted by a vote of two-thirds of the Board of Governors if the member or person shall do or suffer the following:

(a) Willfully violate any of the provisions of the Constitution or By-Laws of the Association.

(b) Fail to pay any dues or other indebtedness owing to the Association within thirty (30) days after written notice from the Commissioner of default in such payment.

(c) Fail or refuse to fulfill its contractual obligations to the Association, its members, its players or any other third party in such a way as to affect the Association or its members adversely.

(d) Wager or countenance wagering by its officers or employees on any game in which a team operated by a member of the Association participates.

(e) Willfully permit open betting or pool selling upon any premises owned, leased or otherwise controlled by the member, if such betting or pool selling is unlawful in the member's jurisdiction.

(f) Offer, agree, conspire or attempt to lose, or control the score of, any game participated in by a team of a member of the Association, or fail to suspend immediately any officer or any player or other employee of the member who shall be found guilty, in a court of law or in any hearing sanctioned by this Constitution, of offering, agreeing, conspiring or attempting to lose or control the score of any such game or of being interested in any pool or wager on any game in which a team operated by a member of the Association participates.

(g) Disband its team during the Association season, dissolve its business or cease its operation.

(h) Willfully fail to present its team at the time and place it is scheduled to play in an Association game, Playoff Game, or Championship Game (whether during the regular season or otherwise).

(i) Willfully misrepresent any material fact contained in its application for membership in the Association.

PROCEDURE FOR SUSPENSION OR TERMINATION

14. The membership of a member or the interest of any "person" e.g., owner, officer, stockholder, partner, or anyone holding any interest herein shall be suspended or terminated on the occurrence of the events described in 13(a) to (i) by the following procedure:

(a) Any member of the Association or the Commissioner may prefer charges that a member or person has violated one or more of the provisions of paragraph 13 of this Constitution. Said charge shall be made in writing and shall be filed with the Commissioner, who shall, no later than three (3) business days after the charges are filed, cause a copy thereof to be served by registered mail upon the member against whom such charges have been made.

(b) The member or person so charged shall within five (5) days after receipt of the charges, file with the Commissioner its written answer thereto. The Commissioner shall thereupon transmit said charges and answer to each of the Governors of the Association and shall call a special meeting of the Governors to hear the charges, to be held on a date not more than ten (10) days after the filing of a member's or person's answer, due notice to be given.

(c) Willful failure by a member or person so charged to answer the charges or to appear at the hearing shall be deemed an admission by said member or person of the total validity of the charges as presented.

(d) At such hearing, the Chairman of the Board of Governors (not associated with the complaining member or with the member charged) shall be the presiding officer. Any member who has filed an official protest relating to the matter at issue shall be deemed to be associated with the complaining member.

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(e) At the hearing, the member or person so charged shall have the right to appear by counsel. Strict rules of evidence shall not apply, and all relevant and material evidence submitted to and at the hearing may be received and considered.

(f) After duly considering all the evidence, the meeting shall vote upon the proposition that the charges have been sustained in whole or in part. The affirmative vote of two-thirds of all the Governors shall be required to sustain the charges.

(g) If the meeting votes to sustain the charges, a vote shall next be taken on the proposition that the member or person charged shall be forced to divest, or be suspended or expelled from the Association. The affirmative vote of two-thirds of all the Governors shall be required for divestiture, suspension or expulsion.

(h) The decisions of the Association made in accordance with the foregoing procedure, shall be final, and each member waives any and all recourse to any court of law to review any such decision.

In the event a person is compelled to divest, said person shall have one year in which to sell, terminate or otherwise dispose of his franchise, player contracts and other club assets, in accordance with paragraph 7 of this Constitution. If the stock or interest of the person is not sold or disposed of within the specified time, then the price and other terms of the sale or disposition shall be fixed by mutual agreement between the said person affected and the Commissioner; if such cannot be accomplished by mutual agreement, then the price and other terms shall be fixed by arbitration, with one arbitrator to be selected by the Commissioner and the other by the affected holder of the stock or interest.

If within five (5) days the two arbitrators cannot agree on the price and terms, then the two arbitrators shall select a third

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arbitrator and the decision of the majority of the arbitrators shall be binding on all parties. If any person required to name an arbitrator fails to do so, or if the two arbitrators cannot agree on a third arbitrator, then such arbitrator in either case shall be named by the Commissioner.

FINE AS ALTERNATIVE TO EXPULSION

15. If a charge that a member or person has committed any of the offenses described in paragraph 13 is sustained, two-thirds of all the Governors may in lieu of compelling the divestiture of the ow or suspending or terminating the membership of such member or person, direct that the divestiture of the ownership of such a member or person be suspended or terminated only if the member or person fails to pay a stated fine in a stipulated manner and by a stipulated date, which fine may be required to be paid, in whole or in part, to any other member or members as compensation to such member or members for damages sustained by it or them by reason of such act or acts of omission or commission by such offending member or person. Such fine shall be payable within five (5) days after its imposition. Moreover, the Board of Governors, may in its discretion, either in addition to, or in lieu of such fine, direct the forfeiture of the offending member's draft rights.

DISSOLUTION

. The Association may be dissolved at any time by a three-fourths vote of all the members of the Board of Governors at a meeting duly warned for this purpose. Upon dissolution, the assets of the Association shall be distributed in accordance with the laws of the State of New York.

AMENDMENTS

17. Except as otherwise provided for in this Constitution, the Constitution of the Association may be amended by the votes of three-fourths of all the Governors at:

(a) the annual meeting of the Board of Governors, in which event prior notice of the amendment is not required; or

(b) any meeting of the Board of Governors, provided that notice of the nature of the amendment is set forth in the notice.

The Constitution may also be amended at any other meeting of the Board of Governors, without prior notice of the amendment, provided there is complete attendance of all the Governors and there is unanimous consent to the adoption of the amendment at the meeting.

Any amendment to this Constitution and any proposal to amend this Constitution which fails of passage shall not be submitted again to the Board of Governors for reconsideration for one (1) year after the passage of such amendment or submission of such proposal to amend, without the consent of two-thirds of all the Governors.

BOARD OF GOVERNORS

18. The members of the Association shall have the general supervision of the affairs of the Association, which general supervision shall be carried out through a Board of Governors. At the annual meeting, the Board of Governors shall elect a chairman whose duties shall be:

(a) to be an ex-officio member of all Committees;

(b) to act as liaison between the Commissioner's office and the Board of Governors;

(c) to preside at Board of Governors' meetings in the absence of the Commissioner.

Each member shall be represented on the Board of Governors by a Governor who may be replaced at will by such member (and

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who shall be a shareholder, director, officer, partner, trustee or executive employee of such member), and who shall be vested with the full power and authority to represent such member and to bind such member by his vote. Each member shall submit to the Commissioner of the Association in writing the name of such Governor and the name of an Alternate Governor, who may be replaced at will by such member (and who shall be a shareholder, director, officer, partner, trustee or executive employee of such member). The authority of such Governor and Alternate Governor shall become effective only after the name of such Governor or Alternate Governor shall be filed with the Commissioner of the Association.

The Board shall have the right to appoint committees and to authorize and direct the Commissioner to appoint committees to assist the Commissioner in the performance of his duties.

A Governor or Alternate Governor may be removed with substantial cause by a vote of three-fourths of all Governors at a meeting called for such purpose. In such case, the member must appoint a new Governor within ten (10) days. The Board may fine a Governor or Alternate Governor up to the amount of $100,000 for willful violations of the Constitution and By-Laws. No player shall be permitted to serve as Governor or Alternate Governor or to vote at any meeting of the Board of Governors.

All actions duly taken by the Board of Governors shall be final, binding and conclusive, as an award in arbitration, and enforceable in a court of competent jurisdiction in accordance with the laws of the State of New York.

MEETINGS OF THE BOARD OF GOVERNORS

19. The following meetings of the Board of Governors shall be held in each year:

(a) An annual meeting of the Board of Governors shall be held, at about the same time each year, on a date and at a place to be fixed by the Commissioner.

(b) The College Draft shall be held at a time and place to be determined by the Commissioner.

(c) Special meetings may be called by the Commissioner at any time and shall be called by him whenever a request is made for such meeting by six (6) or more members by letter or wire.

NOTICE OF MEETINGS

20. Prior written notice shall be given of all meetings of the Board of Governors, each such notice to set forth so far as is reasonably possible the purpose for which the meeting is called. Such notice shall be given by mail or telegram sufficiently in advance of the meeting so that in normal course the notice will be received no later than ninety-six (96) hours prior to the meeting. Notice of meeting may be waived by any member.

QUORUM

21. Governors representing a majority of the members shall constitute a quorum for the transaction of any business unless otherwise provided herein. No quorum, once present, shall be broken by the departure of any Governors.

VOTE REQUIRED AT MEETINGS

22. Subject to the other provisions of this Constitution requiring a greater number of votes, questions arising at meetings of the Board of Governors shall be decided by a majority vote of those present and voting. In the absence of a member's Governor or Alternate Governor, a member shall be entitled to vote by proxy so long as (a) the proxy is given only to another Governor or Alternate Governor, (b) its validity is limited to the one meeting for which it is granted, (c) the Commissioner is informed of the proxy so granted prior to the commencement of the meeting and (d) an announcement of the proxy is made prior to the transaction of any business at the meeting; provided, however, that no vote by proxy shall be counted in favor of an application for membership in the Association pursuant to paragraph 6 of this Constitution, or of a transfer of such membership pursuant to paragraph 7 thereof, or

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of suspension, divestiture or termination of such membership pursuant to paragraph 13 thereof, or of dissolution of the Association pursuant to paragraph 16 thereof.

WRITTEN RESOLUTION OUT OF MEETING

23. Any action or resolution which may be taken or adopted at a meeting of the Board of Governors which because of its emergency nature cannot await the next scheduled meeting of the Board of Governors may be taken or adopted by an instrument in writing setting forth the action so taken or the resolution so adopted manually signed or telegraphically consented to by three-fourths of th .embers of the Board of Governors, provided, however, that any action to approve an application for membership in the Association pursuant to paragraph 6 of this Constitution, or to transfer a membership pursuant to paragraph 7 thereof, or requiring suspension, divestiture or termination of such membership pursuant to paragraph 13 thereof, or to dissolve the Association pursuant to paragraph 16 thereof, may not be taken or adopted except at a meeting of the Board of Governors or by such an instrument signed or telegraphically consented to by all the members of the Board of Governors.

AUTHORITY AND DUTIES OF THE COMMISSIONER

24. (a) A commissioner shall be elected by the affirmative vote of three-fourths of all the Governors. His term of office may be terminated by a vote of three-fourths of the Governors at a meeting duly called for such purpose.

(b) The Commissioner shall have no financial interest, direct or indirect, in any professional sport.

(c) The Commissioner shall have full, complete and final jurisdiction of any dispute involving two or more Members of the Association.

(d) The Commissioner, on behalf of the Association, may incur any expense which, in his discretion, is necessary to conduct and transact the business of the Association, including but not limited to, the leasing of office space, the hiring of employees, and

engaging other assistance or services; provided, however, that the Commissioner shall not have the authority to incur any expense inconsistent with expenses incurred for similar assistance or services during the past five years, without prior approval of the Board of Governors.

(e) The Commissioner shall preside at all meetings of the Board of Governors and shall discharge all duties imposed upon him by this Constitution, by the By-Laws of the Association and by the Board of Governors. He shall interpret and from time to time establish policy and procedure in respect to the provisions of the Constitution, By-Laws and playing rules and any enforcement thereof and any decision emanating therefrom shall be final and unappealable.

(f) The Commissioner shall have the power to suspend for a definite or indefinite period and to impose such fines as are authorized by paragraph 35, 35.1 or any other paragraph relating thereto of this Constitution. He shall have the power to declare null and void any player transaction made by and between members of the Association or by and between members of the Association and any organization outside of the Association.

The Commissioner shall represent members in disputes with operators of teams in other leagues or associations as to rules of ownership of contracts or rights to services of players.

(g) The Commissioner shall be empowered to withhold all revenues due to any member in the event that said member has, in the Commissioner's determination, failed to discharge its financial obligations to the Association or any member thereof.

(h) The Commissioner shall have the right to set the date and time of all games, including playoff games, consistent with:

(i) obligations of the Association under its network TV contract.

(ii) availability of building.

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(iii) what in the Commissioner's judgment are the best interests of all clubs involved.

(i) Refusal to play a game so set renders the offending Member, in the discretion of the Commissioner, liable to a fine not exceeding $25,000, to a forfeit of the game, or both.

(j) The Commissioner shall, wherever there is a rule for which no penalty is specifically fixed for violation thereof, have the authority to fix such penalty as in his judgment shall be in the best interests of the Association. Where a situation arises which is not cover in the Constitution and By-Laws he shall have the authority to make such decision as in his judgment shall be in the best interests of the Association. No monetary penalty fixed under this provision shall exceed $25,000.

(k) All actions duly taken by the Commissioner pursuant to this paragraph 24 or pursuant to any other Section of the Constitution, which is not specifically referable to the Board of Governors, shall be final, binding and conclusive, as an award in arbitration, and enforceable in a court of competent jurisdiction in accordance with the laws of the State of New York.

DEPUTY COMMISSIONER

25. A Deputy Commissioner may be elected at any time by the affirmative vote of three-fourths of all the Governors, and if elected shall perform such duties as are delegated to him by the Commissioner or the Board of Governors. On the death, resignation, incapacity or absence of the Commissioner, the Deputy Commissioner shall assume the duties of the Commissioner and all his rights and powers and continue as such until the return of the Commissioner or a new Commissioner is elected by the Board of Governors.

VICE PRESIDENTS

26. The Commissioner may appoint a vice president-operations, a vice president-administration, and a vice president-

marketing, each of whom, if and when appointed, shall perform such duties as are assigned to him by the Commissioner or the Board of Governors. (Amended 11-16-72.)

SECRETARY

27. A Secretary may be elected by the affirmative vote of three-fourths of all the Governors and, if elected, shall have the care and custody of the official records and papers of the Association; shall keep accurate minutes of all meetings of the Board of Governors; shall issue all official notices and attend to all necessary correspondence; shall prepare and furnish such reports as may be called for by the Commissioner or Board of Governors, and shall be entitled to such books, stationery, blanks and official supplies as he may require. In default of election of a Secretary, or while his office is vacant, the Commissioner shall have the power to appoint a Secretary from among the Governors who, when so appointed, shall have the power to certify to the correctness of the minutes of any meeting of the Board of Governors.

TREASURER

28. A Treasurer may be elected by the affirmative vote of three-fourths of all the Governors and, if elected, he shall be the custodian of all Association funds, receive all dues, fines and assessments and make such payments as shall be ordered by the Commissioner or the Board of Governors, and shall be bonded in companies, and in an amount, satisfactory to the Board of Governors. He shall annually render a report of all his receipts and disbursements to the Board of Governors. At the expiration of his term of office he shall account for the delivery to the Board of Governors of all monies, books, papers and property received by him by virtue of his office. In default of election of a Treasurer, or while his office is vacant, the Commissioner shall act as Treasurer.

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SALARIES OF OFFICERS

29. The officers shall receive such salaries as the Board of Governors shall annually determine and shall be reimbursed for all proper expenses actually incurred by them in the service of the Association. The Association may exact from them such surety bond for the faithful performance of their duties as the Board of Governors may deem proper.

INDEMNIFICATION OF COMMISSIONER

30. The Commissioner will be indemnified by the Association against expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding to which he is made a party, and against any judgments which may be rendered against him therein, by reason of his being or having been Commissioner of this Association, except in relation to matters as to which a court of competent jurisdiction, in a proceeding to which he is a party, shall have adjudged that such indemnification is contrary to law or against public policy. Such right of indemnification shall not be deemed exclusive of any other rights to which the Commissioner may be entitled under the By-Laws of this Association, any agreement with the Association, any vote by the Board of Governors of this Association, or otherwise.

CAPITAL CONTRIBUTIONS

31. (a) Each member shall contribute to the capital of the Association a fixed annual capital contribution of $6,000.

(b) In addition to the capital contribution required under paragraph 31(a) above, each member shall be required from time to time to contribute to the capital of the Association an amount equal to 6% of the gross gate receipts derived from all Championship games played in each regular season, or $30,000 per season, whichever is greater. Each member shall immediately after each such

game send to the Commissioner a report, on forms furnished by the Association, of all the information required as to such game, and shall also send a check for payment of the required sum. Payment of such sums shall be due within five (5) days after each game. The books with respect to such payments shall be open to all members of the Association.

As used herein "gross gate receipts" shall mean the actual receipts derived by any members from the sale of tickets, less refunds and returns, and exclusive of excise and sales taxes based on the sale of such tickets.

ADDITIONAL CAPITAL CONTRIBUTIONS

32. In addition to the contributions provided for in the preceding paragraph, the Board of Governors may, at any meeting of which notice has been given as to the subject matter to be acted on, fix by a vote of the majority of all the Governors an additional amount which can be either a percentage of the gross gate receipts derived from all Championship games played in each regular season, or a fixed sum that each member shall contribute in order to defray the expenses and liabilities of the Association.

PLAYOFF PAYMENTS

33. Each member engaging in the Annual Playoffs shall, after each home playoff game, send a true report covering the sale of tickets for such game and shall also send a check payable to the Association as agent for the members for forty-five per cent (45%) of its gate receipts after the deduction of federal, state and city taxes on admissions, if any.

The monies so received by the Association as agent shall be applied:

(a) To the payment of such player playoff pool as shall be fixed by the Board of Governors by a majority of all the Governors.

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(b) To the payment of traveling and maintenance costs of the contesting playoff teams.

(c) To the payment of the fees and traveling and maintenance costs of the officials appointed for the games.

(d) The balance, if any, shall be distributed equally to the members.

In the event that the monies so received by the Association are insufficient to pay items a, b, and c, the deficit shall be supplied equally by the members.

MEMBERS, THEIR POWERS AND RESPONSIBILITIES

34. Subject to the provisions of this Constitution, the By-Laws of the Association, and its player contracts, each member shall have the right to regulate its own affairs, terminate the employment of or suspend its own manager, players or other employees, and these powers shall extend to all questions of competence, temperance, carelessness, indifference, or other conduct on or off the playing surface that may be regarded by the member as prejudicial to its interests, subject, however, to the right of players to appeal to the Commissioner from any such action.

MISCONDUCT OF OFFICIALS AND OTHERS

35. (a) The provisions of this Section shall govern all members, and officers, managers, coaches, players and other employees of a member, and all officials and other employees of the Association, all hereinafter referred to as "persons". Each member shall provide and require in every contract with any of its officers, managers, coaches, players or other employees that they shall be bound and governed by the provisions of this section. Each member, at the direction of the Board of Governors or the Commissioner, as the case may be, shall take such action as the Board or the

Commissioner may direct in order to effectuate the purposes of this Section.

(b) The Commissioner shall direct the dismissal and perpetual disqualification from any further association with the Association or any of its members, of any person found by the Commissioner after a hearing to have been guilty of offering, agreeing, conspiring, aiding or attempting to cause any game of basketball to result otherwise than on its merits.

(c) Any person who gives, makes, issues, authorizes or endorses any statement having, or designed to have, an effect prejudicial or detrimental to the best interests of basketball or of the Association or of a member or its team, shall be liable to a fine not exceeding $1,000, to be imposed by the Board of Governors. The member whose officer, manager, coach, player or other employee has been so fined shall pay the amount of the fine should such person fail to do so within ten (10) days of its imposition.

(d) If in the opinion of the Commissioner any other act or conduct of a person at or during a pre-season, championship, playoff or exhibition game has been prejudicial to or against the best interests of the Association or the game of basketball, the Commissioner shall impose upon such person a fine not exceeding $1,000 in the case of a member, officer, manager or coach of a member, or $500 in the case of a player or other employee, or may order for a time the suspension of any such person from any connection or duties with pre-season, championship, playoff or exhibition games, or he may order both such fine and suspension.

(e) The Commissioner shall have the power to suspend for a definite or indefinite period, or to impose a fine not exceeding $1,000, or inflict both such suspension and fine upon any person who, in his opinion, shall have been guilty of conduct prejudicial or detrimental to the Association.

(f) The Commissioner shall have the power to levy a fine of $1,000 upon any Governor or Alternate Governor who, in the opinion of the Commissioner, has been guilty of making statements to the press damaging to the Association.

(g) Any person who, directly or indirectly, entices, induces, persuades or attempts to entice, induce, or persuade any player, coach, trainer, general manager or any other person who is under contract to any other member of the Association to enter into negotiations for or relating to his services or negotiates or contracts for such services shall, on being charged with such tampering, be given an opportunity to answer such charges after due notice and the Commissioner shall have the power to decide whether or not the charges have been sustained; in the event his decision is that the charges have been sustained, then the Commissioner shall have the power to suspend such person for a definite or indefinite period, or to impose a fine not exceeding $5,000, or inflict both such suspension and fine upon any such person.

(h) Any person who, directly or indirectly, wagers money or anything of value on the outcome of any game played by a team in the league operated by the Association shall, on being charged with such wagering, be given an opportunity to answer such charges after due notice, and the decision of the Commissioner shall be final, binding and conclusive and unappealable. The penalty for such offense shall be within the absolute and sole discretion of the Commissioner and may include a fine, suspension, expulsion and/or perpetual disqualification from further association with the Association or any of its members.

(i) Except for a penalty imposed under subparagraph (h) of this paragraph 35, the decisions and acts of the Commissioner pursuant to paragraph 35 shall be appealable to the Board of Governors who shall determine such appeals in accordance with such rules and regulations as may be adopted by the Board in its absolute and sole discretion.

MISCONDUCT OF OFFICIALS AND PERSONS OTHER THAN PLAYERS

35.1. Notwithstanding any language in any provision of Section 35 or of this Section 35.1 of this Constitution, the provisions of Section 35 shall apply only with respect to players, and the provisions of this Section 35.1 shall apply only to members; to officers, managers, coaches and other employees of a member; and to all officials and other employees of the Association; except that the term "employees" as used in this Section 35.1 shall mean employees other than players. The word "persons" as used herein [illegible] as used in Section 35, shall include all such [illegible] managers, coaches, officials and employees other than players.

(a) Each member must provide and require in every contract with any of its officers, managers, coaches or other employees that they shall be bound and governed by the provisions of this Section. Each member, at the direction of the Board of Governors or the Commissioner, as the case may be, shall take such action as the Board or Commissioner may direct in order to effectuate the purposes of this Section.

(b) The Commissioner shall direct the dismissal and perpetual disqualification from any further association with the Association or any of its members, of any person found by the Commissioner after a hearing to have been guilty of offering, agreeing, conspiring, aiding, or attempting to cause any game of basketball to result otherwise than on its merits.

(c) Any person who gives, makes, issues, authorizes or endorses any statement having, or designed to have, an effect prejudicial or detrimental to the best interests of basketball or of the Association or of a member or its team, shall be liable to a fine not exceeding $[illegible] to be imposed by the Commissioner. The member whose officer, manager, coach or other employee has been so fined shall pay the amount of

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the fine should such person fail to do so within ten (10) days of its imposition.

(d) The Commissioner shall have the power to suspend for a definite or indefinite period, or to impose a fine not exceeding $25,000 or inflict both such suspension and fine upon any person who, in his opinion, shall have been guilty of conduct prejudicial or detrimental to the Association.

(e) Any person who, directly or indirectly, entices, induces, persuades or attempts to entice, induce, or persuade any coach, trainer, general manager or any other person who is under contract to any other member of the Association to enter into negotiations for or relating to his service or negotiates or contracts for such services shall, on being charged with such tampering, be given an opportunity to answer such charges after due notice and the Commissioner shall have the power to decide whether or not the charges have been sustained; in the event his decision is that the charges have been sustained, then the Commissioner shall have the power to suspend such person for a definite or indefinite period, or to impose a fine not exceeding $10,000 or inflict both such suspension and fine upon any such person.

(f) Any person who, directly or indirectly entices, persuades or attempts to entice, induce or persuade any player who is under contract to any other member of the Association to enter into negotiations for or relating to his services or negotiates or contracts for such services shall, on being charged with such tampering, be given an opportunity to answer such charges after due notice and the Commissioner shall have the power to decide whether or not the charges have been sustained; in the event his decision is that the charges have been sustained, then the Commissioner shall impose a fine of $250,000 upon any such person.

(g) Any person who, directly or indirectly, wagers money or anything of value on the outcome of any game played by a team in the league operated by the Association shall, on being charged with such wagering, be given an opportunity to answer such charges after due notice, and the decision of the Commissioner shall be final, binding and conclusive and unappealable. The penalty for such offense shall be within the absolute and sole discretion of the Commissioner and may include a fine, suspension, expulsion and/or perpetual disqualification from further association with the Association or any of its members.

PENALTIES FOR FAILURE OF TEAM APPEARANCE

36. A member whose team for any reason fails to appear for or complete any scheduled game, whether pre-season, regular season or playoff, including overtime, except for causes beyond its reasonable control, shall pay the sum of $15,000 for each of such games to the member operating the opposing team and shall remit such further compensation and suffer such penalty as shall be imposed by the Commissioner. The same penalty shall apply with respect to a game which is played as a part of a doubleheader program and is not a game constituting one of the regular schedule of home games.

BONUSES

37. No team or player bonus may be offered or paid to a team or player for winning a particular game or series of games or for attaining a certain position in the standing of the league operated by the Association as of a certain date. This prohibition shall not include bonus payments to individual players made at the close of a scheduled season based on the performance of the individual player during the entire season or qualification by the team for a playoff position, or selection of a player for one of the all-star teams,

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or for point standing. The Commissioner shall impose a fine of $2,500 for each violation of the prohibition of this paragraph.

PROTEST

38. In order to protest against or appeal from the result of a game, notice thereof must be given to the Commissioner within forty-eight (48) hours after the conclusion of said game, by telegram, stating therein the grounds for such protest. No protest may be filed in connection with any game played during the regular season after midnight of the day of the last game of the regular schedule. A protest in connection with a playoff game must be filed not later than midnight of the day of the game protested. A game may be protested only by a Governor, Alternate Governor, or Head Coach. The right of protest shall inure not only to the immediately allegedly aggrieved contestants, but to any other member who can show an interest in the grounds of protest and the results that might be attained if the protest were allowed. Each telegram of protest shall be immediately confirmed by letter and no protest shall be valid unless the letter of confirmation is accompanied by a check in the sum of $1,000 payable to the Association. If the member filing the protests prevails, the $1,000 is to be refunded. If the member does not prevail, the $1,000 is to be forfeited and retained in the Association treasury.

Upon receipt of a protest, the Commissioner shall at once notify the member operating the opposing team in the game protested and require both of said members within five (5) days to file with him such evidence as he may desire bearing upon the issue. The Commissioner shall decide the question raised within five (5) days after receipt of such evidence.

RULE CHANGES

39. Playing rule changes may only be made by two-thirds of all the Governors at a meeting warned for this purpose.

EFFECTIVE TIME

40. A telegram shall be deemed to have been sent at the time appearing on the face of the telegram. A letter shall be deemed to have been mailed on the date shown on the postmark appearing on the envelope. Wherever an hour is referred to in this Constitution or in the By-Laws of the Association in connection with a basketball game, or the happening of any other event, such time shall be the local time when current in the city in which the game was, or is to be played, or where the event was, or is to have, occurred.

OFFICIAL STATEMENTS

41. No person, other than the Commissioner, shall have the right to issue any information concerning business transacted at meetings of the Board of Governors or reveal or make public any official business of the Association. Any person violating such rule shall be subject to, in the discretion of the Commissioner, a fine of not more than $5,000.

FISCAL YEAR

42. The fiscal year of the Association shall commence on June 1 and terminate on May 31.

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BY-LAWS

ARTICLE I

Definitions

1.01. *Association.* As used herein the term "Association" shall be deemed to mean the National Basketball Association and its successors.

1.02. *Member.* As used herein the term "Member" shall be deemed to mean a member of the Association.

1.03. *Team.* As used herein the term "Team" shall be deemed to mean the team operated by a Member. The terms "Team" and "Member" are sometimes used interchangeably.

1.04. *Player.* As used herein the term "Player" shall be deemed to mean either a person carried on any Player List of a Team or, where the context permits, a person eligible to be carried on any such list.

1.05. *Season.* As used herein the term "Season" shall be deemed to mean the period beginning the day of the first of the Association's schedule of Championship Games and ending at the end of the day on which the last Playoff Game is played.

1.06. *Championship Game.* As used herein "Championship Game" shall be deemed to mean any game included in the Association's schedule of Championship Games and shall not include Playoff Games or Exhibition Games.

1.07. *Exhibition Game.* As used herein "Exhibition Game" shall be deemed to mean any game other than a Championship Game or a Playoff Game.

1.08. *Active List.* As used herein the term "Active List" shall be deemed to mean the list of Players who have signed formal

contracts with a Member, and are otherwise eligible to participate in a Championship Game. During the Season the Active List shall also be known as the "Playing Roster".

1.09. *Injured List.* As used herein the term "Injured List" shall be deemed to mean the list of Players who, due to injury or illness, have been temporarily removed from the Active List of a Team. Full documentation in the form of a statement submitted by a physician must be filed in the Association office within 48 hours after placing a man on the Injured List.

1.10. *Suspended List.* As used herein the term "Suspended List" shall be deemed to mean the list of those Players who for proper cause, have been suspended by the Association or by the Member having the right to so suspend. No player may be placed on a Suspended List who is not signed to a standard NBA player contract.

1.11. *Voluntarily Retired List.* As used herein the term "Voluntarily Retired List" shall be deemed to mean the list of those Players who retire at a time when the Member having rights to the services of such Player, desires to retain priority to renequire such Player's services.

1.12. *Armed Services List.* As used herein the term "Armed Services List" shall be deemed to mean the list of those Players who have entered the Armed Services and are serving on active duty.

1.13. *College Draft List.* As used herein the term "College Draft List" shall be deemed to mean the list of those Players who shall have been drafted in accordance with the Association's annual college draft. Players on an NBA College Draft List who subsequently sign a professional contract with other than an NBA club may remain on the original College Draft List.

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1.14. *Free Agent.* As used herein the term "Free Agent" shall be deemed to mean a person who is eligible to be a Player in the Association, is not carried on any Player List of any Team, and, with respect to whose services, no Member is entitled to a priority.

1.15. *Player List.* As used herein the term "Player List" shall be deemed to mean any of the lists referred to in Sections 1.08 through 1.13 of these By-Laws. Where applicable, the duration of time that a Player may be carried on any such list shall be established from time to time by the Board of Governors of the Association. The maximum number of Players which a Member may carry on its Active List shall be twelve. Notwithstanding, during the period from the day following the day of the last Championship Game until the day before the beginning of the following Season, the maximum number of Players which a Member may carry on its Active List shall be twenty. The maximum number of Players which a Member may carry on its Injured List shall be three. The maximum number of Players which a Member may carry on its College Draft List shall be twenty. Except as aforesaid, there shall be no limit on the maximum number of Players which a Member may carry on any other Player List. The names of Players on the aforementioned Lists—Sections 1.08 through 1.13—shall be maintained in the Commissioner's Office and shall be disseminated from time to time to all the Members.

1.16. *Players Farmed Out.* Teams intending to "farm out" a player to a non-NBA professional basketball team shall provide written notice to the Commissioner. Not more than two players on the Active List in any one season may be "farmed out". Any such player so "farmed out" may be recalled and shall then remain on the playing roster of his team until at least five Championship Games have thereafter been played by his team. Such player may be "farmed out" a second time and if recalled again shall remain on the playing roster of his team until at least five Championship Games have thereafter been played by his team. Such player may

not be "farmed out" a third time during that season, except after compliance with the Association's waiver procedure. Prior to recalling a "farmed out" player, the teams must notify the Commissioner by telegram of such transaction.

ARTICLE II

Eligibility of Players

2.01. *Good Character.* All Players shall be of good moral character and possess qualities which will make them proper members of their respective Teams. The Commissioner shall have the right to disqualify a Player if the Commissioner finds that the Player does not possess the requisite qualities of character and morality. Such disqualification may be made by the Commissioner only after a hearing before the Commissioner, at which hearing the player shall be afforded the right to call witnesses, to submit written evidence and to be represented by counsel. The decision of the Commissioner shall be appealable to the Board of Governors who upon receipt of said appeal, shall require all interested parties within ten days to file with the Board of Governors such evidence as they may desire bearing upon the issue. The Board of Governors shall decide the appeal within ten days after receipt of such evidence.

2.02. *Previous Suspensions.* No Member shall engage the services of a player who has previously been suspended or expelled by any athletic organization, amateur or professional, or who has previously been suspended or expelled by any academic institution for other than scholastic reasons, unless the Commissioner shall certify that such prospective player shall be eligible to play in the Association. Should the Commissioner fail for any reason to certify the eligibility of such prospective player after a hearing before the Commissioner, at which hearing the player shall be afforded the right to call witnesses, to submit written evidence and to be represented by counsel, then his action shall be appealable to the Board

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of Governors who shall upon receipt of said appeal, require all interested parties within ten days to file with the Board of Governors such evidence as they may desire bearing upon the issue. The Board of Governors shall decide the appeal within ten days after receipt of such evidence.

2.03. *Scholastic Eligibility.* A Student who is participating in intercollegiate athletics shall not be eligible as a Player.

2.04. *Age.* A person who is not at least 17 years old shall not be eligible to be drafted or to be a Player, nor may such person be signed by a Member to any agreement, nor may his future services in any way be negotiated for, contracted for or otherwise reserved. Any negotiations or agreements with any such person shall be null and void and shall confer no rights whatsoever. Nor shall a Member violating the provisions of this Section be permitted to acquire the rights to the services of such person at any time thereafter.

2.05. *Four-Year Rule.* (a) A person who has not completed high school or who has completed high school but has not entered college, shall not be eligible to be drafted or to be a Player until four years after he has been graduated or four years after his original high school class has been graduated, as the case may be, nor may the future services of any such person be negotiated or contracted for, or otherwise reserved. Similarly, a person who has entered college but is no longer enrolled, shall not be eligible to be drafted or to be a Player until the time when he would have first become eligible had he remained in college. Any negotiations or agreements with any such person during such period shall be null and void and shall confer no rights whatsoever; nor shall a Member violating the provisions of this subsection be permitted to acquire the rights to the services of such person at any time thereafter.

(b) A person ineligible to be drafted by virtue of the foregoing shall notwithstanding become eligible to be drafted if he files a

written application with the Commissioner stating that such ineligibility causes him hardship, and if the Commissioner finds as fact upon such evidence as he deems material that the ineligibility of the applicant does cause hardship to the applicant. Upon such application and finding by the Commissioner, the Commissioner shall promptly give notice to every Member that the applicant is eligible to be drafted. The Commissioner shall not find the applicant ineligible to be drafted except after a hearing before the Commissioner or a committee of Governors appointed by the Commissioner, at which hearing the applicant shall be afforded the right to call witnesses, to submit written evidence and to be represented by counsel. If the applicant is declared eligible and his written application is received by the Commissioner on or before a date fixed each year and publicly announced by the Commissioner, the applicant shall be eligible to be drafted in the next succeeding College Draft. If the applicant's written application is received after such date, he shall not be eligible to be drafted in that year's College Draft but shall be eligible to be drafted in the College Draft of the following year.

(c) Notwithstanding the foregoing, applicants declared eligible whose written applications are received by the Commissioner on or before August 1, 1971, shall be eligible to be drafted in a supplementary draft to be conducted on September 10, 1971. In such supplementary draft, choices shall be made in reverse order of standing of the Teams on a consolidated basis determined as of the close of the 1970-1971 Championship Season. In such supplementary draft, each Member shall in regular order be given an opportunity to declare whether it elects to select an applicant in place of its first draft choice in the 1972 College Draft. If, after the first round, any applicant remains unselected, a second and, if necessary, subsequent rounds shall be conducted. Any Member

selecting an applicant in any round of the 1971 supplementary draft shall thereby become ineligible to participate in that round of the 1972 College Draft.

2.06. *Determination of Eligibility.* All questions of eligibility in accordance with the provisions of these By-Laws shall be determined by the Commissioner in accordance with the foregoing, and in accordance with such other rules and regulations, not inconsistent with these By-Laws, as the Board of Governors shall determine.

2.07. *Formal Contract.* A person who has not, in accordance with these By-Laws, signed a formal contract with a Member shall not be eligible to participate as a Player in any Championship Game or Playoff Game. Nor shall any person participate as a Player in any Exhibition Game unless he has signed such a formal contract for the then current Season or the immediately preceding Season.

2.08. *Consequences of Ineligibility.* Any team which utilizes the services of any person not eligible (in accordance with these By-Laws or otherwise) to participate as a Player in any Championship Game or Playoff Game shall, regardless of the actual final score of the game, be deemed, for all purposes, to have lost such game, and the opposing Team shall be deemed, for all purposes, to have won such game. "Utilization" for the purpose of this paragraph includes dressing in team uniform as well as participating as a player in the game.

ARTICLE III

Contractual Rights

3.01. *Rights to Free Agents.* No Member shall be entitled to any priority with respect to the acquisition of the services of a Free Agent.

3.02. *Conflicting Claims.* In the event that a dispute shall arise between Members with respect to the alleged existence of a priority to acquire the services of any Player, and the time when the initial claim to such priority shall be material, the priority shall be determined in accordance with a first-in-time policy. To this end the Member first sending the required telegram, as evidenced by the time inscribed on the face thereof, shall be deemed to have priority; provided, however, that such time shall be related to Eastern Standard Time, and the relative times of the telegrams shall be adjusted accordingly.

3.03. *Preliminary Agreements.* A Free Agent shall cease to be a Free Agent from the earlier of the time he shall be placed on any Player List or the time that he shall enter into a contract with a Member. For this purpose, an agreement shall be deemed to have been made when the Player has signed a form of the Uniform Player Contract then in use by Members of the Association.

3.04. *Tender of Contracts.* From and after the end of each Season and until the next succeeding September 1st, a Player under contract by a Member for the Season then ended shall be deemed to continue on the Active List of such Member. If a Member fails to tender such Player a contract on or before midnight of September 1, the Player involved shall, from and after said date, be a Free Agent. A tender shall be deemed to be valid if personally delivered or mailed registered or certified mail to the Player's last known place of residence. A tender by mail shall be deemed to have been made at the time of mailing as evidenced by the postmark, and not at the time of receipt.

3.05. *Title to Players' Contracts.* Each Member must have absolute title to the contract and rights to services of its Players. The use of loaned Players is prohibited.

3.06. *Intra-Association Transfer of Player's Contracts.* In the event that the contract of a Player is transferred by one Member to

another during the regular season, the salary of the Player so transferred shall be apportioned on a per diem basis utilizing the entire number of days in the National Basketball Association regular season, without regard to Playoff Games or Exhibition Games. The transferor shall be responsible for the portion of the salary from the first day of the transfer and the transferee shall be responsible for the salary of the Player from and after said date. In cases where the Player actually plays in a game for the assignee club on the date of the transfer, then the assignee shall be responsible for the salary on that date. The transferee shall assume all of the obligations of the transferor which are contained in the Player's contract to the same extent as if the contract had originally been between the transferee and the Player. The transferee shall not be liable for any other provision unless it shall have actual knowledge of the same and shall have, in writing, specifically agreed to assume the same. The foregoing provisions shall be stated and agreed upon in detail during the conference call with the NBA office which precedes every player assignment transaction and in addition will be noted in detail on the player assignment form which accompanies each transaction. The foregoing provisions may be modified by the express written consent of the transferor and the transferee in any given situation.

The transferor and transferee of the contract of any Player shall each have the responsibility of promptly notifying the Commissioner, precisely and in detail, of every term and condition of the transaction under which the contract of such Player is being transferred, including, but not limited to, all details with respect to amounts of money, terms of payment, and transfers of draft choices, if any.

Any term or condition of any such transaction not so disclosed to the Commissioner shall not be enforceable. In addition, the Member or Members failing to discharge this responsibility shall be

liable, in the discretion of the Commissioner, to a fine not exceeding $10,000.

A Member who has transferred its rights to the services of a Player may not reacquire such rights prior to the end of the Season in which the transfer occurred, or, if the transfer occurred between Seasons, prior to the end of the next succeeding Season; provided, however, that the foregoing prohibition shall not apply in the event that the transferee shall have first offered the services of such Player to all other Members through the waiver procedure.

3.07. *Waiver Right.* Except for sales and trading between Members in accordance with these By-Laws, no Member shall sell, option or otherwise transfer the contract with, right to the services of, or right to negotiate with, a Player without complying with the waiver procedure prescribed by these By-Laws.

3.08. *Waiver Price.* The waiver price shall be $1,000 per Player.

3.09. *Waiver Procedure.* A Member desiring to secure waivers on a Player shall notify the Commissioner, and the Commissioner, on behalf of such Member, shall immediately notify all other Members of the waiver request. Such Player shall be assumed to have been waived unless a Member shall timely notify the Commissioner by telegram and telephone of a claim to the rights of such Player. Once a Member has notified the Commissioner to attempt to secure waivers on a Player, such notice may not be withdrawn. A Player remains the financial responsibility of the Member placing him on waivers until the waiver period set by the Commissioner has expired.

3.10. *Waiver Period.* If the Commissioner distributes notice of request for waiver at any time during the Season or within four weeks before the beginning of the Season, any Members wishing to

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claim rights to the Player shall do so by giving notice by telephone and telegram of such claim to the Commissioner within 48 hours after the time of the Commissioner's notice. If the Commissioner distributes notice of request for waiver at any other time, any Member wishing to claim rights to the Player shall do so by sending notice of such Claim to the Commissioner within ten days after the date of the Commissioner's notice. A team may not withdraw a claim to the rights to a Player on waivers.

3.11. *Waiver Preferences.* In the event that more than one Member shall have claimed rights to a Player placed on waivers, the claiming Member with the lowest team standing at the time the waiver was requested shall be entitled to acquire the rights to such Player. If the request for waiver shall occur between Seasons or prior to midnight November 30th, the standings at the close of the previous Season shall govern.

If the won and lost percentages of two claiming Teams are the same, then the tie shall be determined, if possible, on the basis of the Championship Games between the two teams, during the Season or during the preceding Season, as the case may be. If still tied, a toss of the coin shall determine priority. For the purpose of determining standings, both conferences of the Association shall be deemed merged and a consolidated standing shall control.

3.12. *Players Acquired Through Waivers.* A member who has acquired the rights and title to the contract of a player through the waiver procedure may not sell, trade or waive such rights for a period of 30 days after the acquisition thereof, provided, however, that if the rights to such Player were acquired between Seasons, the 30 day period described herein shall begin on the first day of the next succeeding Season.

3.13. *Additional Waiver Rules.* The Commissioner or the Board of Governors shall from time to time adopt such additional

rules (supplementary to these By-Laws) with respect to the operation of the waiver procedures as he or it shall determine. Such rules shall not be inconsistent with these By-Laws and shall apply to but shall not be limited to the mechanics of notice, inadvertent omission of notification to a Member and rules of construction as to time.

ARTICLE IV

Formalities of Contract

..01. *Standard Contract.* All formal contracts shall be in the form prescribed and adopted by the Association, which contracts shall contain all of the terms of employment, including the salary to be paid to such Player and shall be valid and binding upon the Member and the Player immediately upon its execution. If pursuant to the Constitution of the Association or these By-Laws, the Commissioner disapproves such contract, thereupon such contract shall terminate and be of no further force or effect and the Member and the Player shall thereupon be relieved of their respective rights and liabilities thereunder. Such contracts may contain such other provisions not inconsistent with the Uniform Player Contract, the Association's Constitution or these By-Laws as the parties entering into such contract shall determine.

4.02. *Filing of Contract.* All such contracts entered into prior to the first day of the Season shall be filed at the Association's principal office prior to the first Championship Game of the NBA Season. All such contracts entered into during the Season shall be filed at the Association's principal office within 48 hours after the execution thereof and the Member entering into such contract shall immediately notify the Commissioner by telegram of such execution. Until such notice and consent and approval by the Commissioner, such Player shall not be eligible to participate in a Championship Game. As used herein, filing of a contract shall mean actual

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receipt by the Association's principal office of an executed counterpart of the contract between the Member and the Player.

4.03. *Filed Documents.* The Commissioner shall file at the principal office of the Association all Player contracts, transfer agreements and other similar documents governing the rights of Members and Players. Information contained in any such filed document may, in the discretion of the Commissioner, be made available to any Member.

4.04. *Violations.* Any Member entering into a contract with a Player or prospective player in violation of these By-Laws, shall be liable in the discretion of the Commissioner, to such penalty as in his judgment shall be in the best interests of the Association. Upon finding that such a contract is in existence, the Commissioner may declare the Player involved a Free Agent and prohibit the offending Member, forever or for a specified period of time, from dealing with such Player or prospective player.

ARTICLE V

Rosters

5.01. *Playing Roster.* Only Players whose names appear on the Playing Rosters shall be permitted to dress for and be eligible to participate in each Championship or Playoff Game.

5.02. *Injured List.* When a Player on the Playing Roster is unable, due to injury or illness, to perform his duties, his name may be transferred from the Playing Roster to the Injured List. Whenever there is doubt concerning the injury or illness of any such Player, such doubt shall be resolved by the Commissioner after examination by him of such documentation as he shall request. If any Member shall transfer a Player to the Injured List and, in accordance with these By-Laws, shall substitute a Player in his stead, such injured or ill Player may not be restored to the Playing

Roster until at least five Championship Games have been played by his Team after the time he was transferred to the Injured List.

5.03. *February 1st Rule.* From the start of the Season and until midnight on February 1st of the next year, Members may make such changes in their Playing Rosters as they shall deem appropriate, provided that such changes are in accordance with these By-Laws. No trades or sales among Members are permitted after midnight, February 1st, of any year. After midnight, February 1st, and up to and including the day of the last Championship Game of the Season, additions to a Member's Playing Roster can be made through the waiver procedure or by acquiring a Player who is not under contract to any other Member. A Player acquired by waivers after midnight March 1st is not eligible to participate in Playoff Games during the then current Season unless the Member's Playing Roster is reduced to eight Players due to injury or illness.

5.04 *Playoff Eligibility.* Each Member must submit a list of its players eligible to compete in the Playoff Games by midnight of the last playing date of the Championship Season.

5.05. *Suspended List.* Any Player may be suspended by the Member employing him or by the Commissioner for failure to discharge his contractual obligations, or for failure to comply with training schedules or other disciplinary rules or procedures. In the event that any Member shall suspend a Player it shall give notice in writing of such suspension to the Commissioner. A notice of suspension shall include the name and address of the suspended Player, the cause and duration of the suspension and such other information as the Member invoking the suspension shall deem relevant.

The names of the suspended Players shall be placed on the Suspended List and each Member shall be entitled to protection of its rights to the services of such suspended Players to the same extent

as if the Players had not been suspended. Notwithstanding anything to the contrary contained herein, the suspension during the Season of a Player or Players on a Member's Playing Roster shall not permit such Member to recruit substitute Players on account of such suspensions. The Member shall, of course, be permitted to recruit substitute players in the event that its players are suspended prior to the beginning of the regular NBA season.

5.06. *Minimum Number of Players.* Throughout the Season no Team shall appear for any Championship Game unless at least 8 players are dressed for and eligible and able to participate in such Championship Game.

5.07. *Hardship.* In the event that the application of the provisions of these By-Laws pertaining to Playing Rosters and replacement of Players, shall in any particular case, cause extreme hardship, such provisions, upon application by the Member claiming hardship, may be waived or modified, and special rules may be invoked for the Member claiming such hardship, provided, however, that such provisions may only be modified by the affirmative vote of a majority of the entire Board of Governors of the Association (the Governor representing the Member claiming hardship not voting).

5.08. *Voluntarily Retired List.* A Player may be transferred to the Voluntarily Retired List only after the Commissioner is notified in writing by both the Player and the club for which he has played. No Player whose name appears on any Member's Voluntarily Retired List shall, without the unanimous consent of the Board of Governors, be permitted to engage in any Championship Game within a period of one year from the date that his name shall have been first placed on such list. The inclusion of a Player's name on a Member's Voluntarily Retired List shall entitle such Member to a priority to acquire the services of such Player. If such Player shall desire to become an active Player in the Association, and the

Member which he previously played for does not desire to acquire his services, the right to acquire such services shall be determined in accordance with the waiver procedure.

5.09. *Armed Services List and Returning Servicemen.* (a) Members shall continue to have rights to the services of a Player who has been inducted into the armed services by placing the name of the Player on its Armed Services List. The name of such Player, unless removed from such list in accordance with the provisions hereof, shall remain on such list during his active duty and for ninety days thereafter. As used herein "active duty" shall not include performance of periodic reserve obligations of any such Player.

(b) Notwithstanding the foregoing, a Player in the Armed Services may be retained or placed on a Member's Active List and may play in Championship Games and, if otherwise eligible, in Playoff Games, if his retention on such Active List will not result in exceeding the maximum provided in Section 1.15 of these By-Laws. A Player may be placed on a Member's Armed Services List at any time after such Player has been inducted into the Armed Services, provided that a Player may be placed on such Armed Services List from the Member's Active List only once during the same period of active service in the Armed Forces if such Player has played in any Championship Games or Playoff Game during the period of active service.

(c) A Player who was under contract with a Member at the time of his induction into the Armed Services and who, upon his release, requests re-employment prior to February 1st, must be tendered a contract on the same terms and conditions as the contract in existence at the time he was so inducted. Such Player must be "tried out" and, notwithstanding the provision in Section 1.15 of these By-Laws governing the maximum number of Players which may be carried on an Active List, may participate in Championship

Games and Playoff Games. If such a returning Player requests re-employment on or after February 1st, he must similarly be tendered a contract and "tried out" and notwithstanding the provision in said Section 1.15 of these By-Laws, may participate in Championship Games but may not participate in Playoff Games.

(d) The provisions of this Section 5.09 shall also apply to returning servicemen not previously under contract with a Member, provided, however, that no more than two such Players may be "tried out" by a Member at any one time.

(e) A Player who has played in any Championship Game or Playoff Game while in the Armed Services and who, upon his release from the Armed Services, is entitled to employment or re-employment pursuant to the provisions of subparagraphs (c) and (d) hereof, must notwithstanding the provisions of those subparagraphs, be included in determining the maximum number of Players on the Member's Active List provided for in Section 1.15 of these By-Laws.

ARTICLE VI

College Draft

6.01. *Draft Date.* The annual draft of college basketball players shall be held on a date to be fixed by the Commissioner.

6.02. *Draft Preferences and Choosing Players.* Draft Choices shall be made in inverse order of the standing of Teams at the end of the preceding Season as follows:

(a) The Team with the lowest standing in each conference shall have the first selection. As between the two Teams, a flip of the coin shall determine which Team shall pick first. After each of the two Teams has selected a Player, the remaining Teams ranked by percentages in inverse order

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on a consolidated basis shall be entitled to make one selection each thereafter.

(b) After the procedures outlined in subparagraph (a) above have been complied with, all Teams, ranked in inverse order on a consolidated basis at the close of the preceding Season, shall be entitled to make their selections, one selection at a time.

(c) Successive rounds for choosing Players shall continue for ten rounds unless a majority of the Members shall vote to terminate the draft selections at the end of an earlier round.

(d) If any Teams are tied on a percentage basis, then priority as between such Teams is to be established on the basis of the won and lost record between the Teams involved, the better record prevailing, and if still tied, then priority shall be determined by the toss of a coin. As between the two Teams participating in any such toss of a coin, the winner of the toss shall have the right to the earlier selection in the first and all other odd-numbered rounds and the loser shall have the earlier selection in the second and all other even-numbered rounds.

(e) A Member which has drafted a college player in accordance with the foregoing shall retain all rights to negotiate with and sign such player so long as such player remains on its College Draft List.

6.03. *Persons Eligible for Draft.* The following classes of persons shall be eligible for the annual draft:

(a) Students in four year colleges whose classes are to be graduated during the June following the holding of the draft;

(b) Students in four year colleges whose original classes have already been graduated, and who do not choose to exercise remaining collegiate basketball eligibility;

(c) Students in four year colleges whose original classes have already been graduated if such students have no remaining collegiate basketball eligibility;

(d) Persons who become eligible pursuant to the provisions of Section 2.05 of these By-Laws.

6.04. *First Draft Choice.* There shall be no restrictions on the sale or trade of the rights of any Member to a first draft choice.

6.05. *Negotiations with Drafted Players.* Prior to the annual draft meeting, but subsequent to the completion of the regular collegiate basketball schedule, it shall be permissible for Members interested in the services of particular players to discuss with such players the single question whether or not the player would be interested in playing basketball in the Association, if such player is chosen during the draft meeting. Notwithstanding the foregoing, the team with the lowest won-lost percentage in each conference may also discuss the matter of compensation with its contemplated first draft choices.

6.06. *Additional Rule: Concerning Draft.* The Board of Governors shall, from time to time, be free to adopt such additional rules and regulations regarding the annual draft as it shall determine. Such rules and regulations shall not be inconsistent with these By-Laws.

ARTICLE VII

Miscellaneous Provisions

7.01. *Exhibition Games.* No Member may participate in an Exhibition, Charity or All-Star Game during the Season without

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the approval of a majority of the Board of Governors. No more than three Players from any one Team may participate in an Exhibition Game, until after completion of the final game of the NBA Playoff Series.

7.02. *Championship Games.* No Member shall be required without its consent, to participate as the visiting team in any Championship Game to be played in any city in which the home team does not have exclusive rights as provided in the Constitution of the Association.

7.03. (a) *Television Receipts.* The revenues derived from network television contracts shall be shared equally among the Members of this Association.

(b) *Gate Receipts.* The visiting Team shall be entitled to no portion of the gate receipts derived from any Championship Game.

7.04. *Appropriate Facilities.* The Board of Governors or the Commissioner from time to time shall adopt such rules and regulations as shall be deemed appropriate pertaining to the necessary facilities and conditions with which and under which Championship Games and Playoff Games shall be played.

7.05. *Protection for Referees.* (a) Each Member shall provide at its building a separate dressing room for the exclusive use of the referees, and shall take all steps necessary to insure that no person, without the permission of the referees, gains access to such dressing rooms.

(b) No person affiliated with any Member, shall enter such dressing room except with the permission of the referees.

(c) Each Member shall provide at its building adequate police protection for the referees.

(d) A Member failing to comply with the provisions of subsections (a) or (c) and any person affiliated with any Member, contravening the provision of subsection (b) shall be liable to a fine not exceeding $5,000 to be imposed by the Commissioner.

(e) The Commissioner shall instruct all referees to report to him any breach of this section.

7.06. *Amendments.* These By-Laws may be amended by the affirmative votes at a meeting of three-fourths of all the Governors.

Any proposal including a proposal to amend these By-Laws, which is not adopted shall not again be submitted to the Board of Governors for reconsideration for at least one (1) year after the submission of such proposal, without the prior consent at a meeting of two-thirds of all the Governors. Similarly, any amendment to these By-Laws which has been duly adopted or any proposal which has been favorably acted upon, shall not be repealed or further amended for at least one (1) year after such adoption unless the proposal for such repeal or further amendment has first been consented to at a meeting by two-thirds of all the Governors.

7.07. *Order of Voting, etc.* On all votes of the Board of Governors the roll shall be called in alphabetical rotation according to the name of the home city of each Member. Any vote cast, including an abstention or any waiver of the right of any Member to vote, once recorded, may not be withdrawn or altered on that roll call.

First Refusal Offer Sheet

Name of Player:

Date:

Address of Player:

Name of New Team:

Name and Address of Player's Representative Authorized To Act For Player:

Name of Prior Team:

Address of Prior Team:

Principal Terms Of Player Contract With New Team:

[Supply Information on this Sheet or on Attachment]

1. Money to be paid or loaned, including deferred compensation and security, amount and terms of loans, if any, and description of variation and method of calculation, if any:

2. Property, and description thereof:

3. Investment opportunities and description thereof, including financing terms, if any:

4. Modifications and additions to Uniform Player Contract: [or attach marked-up copy of Uniform Player Contract]

5. Consideration given for services other than as basketball player:

6. Other terms:

Describe below and/or attach in written form all material statements (oral and written) furnished by new team regarding value of terms above, other than new team's estimates or opinions of such value:

The determination of the arbitrator in a Valuation Arbitration, if any, is annexed hereto.

Player: New Team

By_____ By_____

First Refusal Exercise Notice

Name of Player: Date:

Address of Player: Name of Prior Team:

Name and Address of Player's Representative Authorized to Act for Player: Name of New Team:

The undersigned member of the NBA hereby exercises its right of first refusal so as to create a binding agreement with the Player containing the Principal Terms contained in the First Refusal Offer Sheet (a copy of which is attached hereto) and those terms of the Uniform Player Contract not modified by such Principal Terms.

Prior Team

By_____

NEW YORK STATE

Uniform Commercial Code - FINANCING STATEMENT - Form UCC-1

IMPORTANT - Read instructions on back before filling out form

This FINANCING STATEMENT is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code.

No. of Additional Sheets Presented:

3. Maturity Date (optional):

1. Debtor(s) (Last Name First) and Address(es):

National Basketball Association
(the "NBA")
2 Penn Plaza
New York, New York 10001

2. Secured Party(ies) Name(s) and Address(es):

National Basketball Players Association
(As Agent for Class Members in
Robertson, et al. v. National
Basketball Association et al.)
15 Columbus Circle, New York, N.Y. 10023

4. For Filing Officer: Date, Time, No., Filing Office

5. This Financing Statement covers the following types (or items) of property:

All present and future rights (and all proceeds of such rights) of the NBA to receive $537,500 per annum of T.V. Revenues under any present or future network television contracts entered into by the NBA.

☒ Proceeds ☐ Products of the Collateral are also covered

6. Assignee(s) of Secured Party and Address(es)

7. ☐ The described crops are growing or to be grown on *
☐ The described goods are or are to be affixed to *
*(Describe Real Estate Below)

8. Describe Real Estate Here:

9. Name(s) of Record Owner(s):

No. & Street | Town or City | County | Section | Block | Lot

10. This statement is filed without the debtor's signature to perfect a security interest in collateral (check appropriate box)

☐ under a security agreement signed by debtor authorizing secured party to file this statement, or
☐ already subject to a security interest in another jurisdiction when it was brought into this state, or
☐ which is proceeds of the original collateral described above in which a security interest was perfected:

National Basketball Association

By _____
Signature(s) of Debtor(s)

National Basketball Players Association
as Agent

By _____
Signature(s) of Secured Party(ies)

(1) Filing Officer Copy-Numerical

9/65 STANDARD FORM NEW YORK STATE FORM UCC-1 — Approved by John P. Lomenzo, Secretary of State of New York

NOTICE OF CLASS ACTION SETTLEMENT

OFFICE OF THE CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,	:	70 Civ. 1526 (RLC)
Plaintiffs,	:	
-against-	:	
NATIONAL BASKETBALL ASSOCIATION, et al.,	:	
Defendants.	:	

TO ALL PERSONS WHO ARE NOW OR AT ANY TIME HAVE BEEN ACTIVE PLAYERS FOR MEMBER TEAMS IN THE NATIONAL BASKETBALL ASSOCIATION SINCE THE PLAYING SEASON WHICH INCLUDED APRIL 16, 1970

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, you are hereby notified that on June , 1976, a hearing will be held before this Court, at which you are entitled to be present as set forth below, to determine whether a settlement of this action should be finally approved by this Court as fair, reasonable and adequate. The terms of the settlement are summarized below.

I. Class Action Determination

The Court has heretofore ordered that this action be maintained as a class action pursuant to Rule 23(b)(1) of the Federal Rules of Civil Procedure. Notice of that class action determination has been previously given by sending a Notice of Pendency of Class Action to all those persons who became members of the class prior to the commencement of the 1975-76 National Basketball Association ("NBA") playing season. A copy

of the Notice of Pendency of Class Action is being sent with this Notice of Class Action Settlement to all those persons who became members of the class during the 1975-76 NBA playing season.

Information concerning the specific allegations in the complaint, the relief sought by plaintiffs and the precise definition, scope and effect of the class action determination is set forth in detail in that Notice of Pendency of Class Action.

II. Summary of Proposed Settlement Terms

As set forth in the Stipulation and Settlement Agreement dated April 29, 1976, agreement has been reached for the settlement of this action. The Court has found that a preliminary showing of fairness, reasonableness and adequacy has been made as to this settlement so as to warrant a final hearing on notice to the class, and has ordered this Notice to be sent to you. The terms and conditions of the proposed settlement essentially deal with current NBA practices and a Settlement Fund to be paid to all class members, all of which terms and conditions are set forth in full in the Stipulation and Settlement Agreement and Exhibits thereto, and the fee application of class counsel which are on file in this Court. The following description of the proposed settlement is a summary only.

A. Certain practices in the NBA shall be modified and/or eliminated so as to increase the number of teams with which NBA players may negotiate and sign player contracts as follows:

1. College Draft - As to each college draft to be held between 1976 and 1986 the college draft will be modified so that the present NBA rules which place no time limitation on the duration of the exclusive right of an NBA team to negotiate with a drafted player shall no longer apply. Instead, draft rights shall last for a maximum of two years from the time a player is first drafted, subject to certain exceptions set forth in the Stipulation and Settlement Agreement. In addition, all persons whose high school classes have graduated will become eligible to be drafted by NBA teams prior to the graduation of their college classes, provided that such a person renounces his intercollegiate basketball eligibility.

2. Option Clause - The option clause contained in paragraph 22 of the NBA's Uniform Player Contract has been construed by the NBA and its member teams to add one year to a player's stated term of contract at the team's option provided that 100% of the player's compensation for the last year of the player's contract is offered.

As to option clauses of any kind in all existing player contracts, they shall be deemed eliminated and rendered void at the conclusion of the 1975-76 playing season, except for options that can be exercised prior to August 1, 1976 for the 1976-77 playing season and options which were the subject of specific substantive negotiations between a player and an NBA team.

As to all player contracts to be signed in the future, no option clause may exist or be imposed, except for rookie players who sign one-year contracts and other players who specifically negotiate an option clause (which may not be contained in a Uniform Player Contract), including an option in the player's favor.

3. Compensation Rule - The compensation rule currently applicable in the NBA provides that when a player completes his contract and signs a player contract with another NBA team, the new team is obligated to compensate the player's former team and failing agreement between the two teams as to compensation, the Commissioner of the NBA may, but need not, award compensation to the former team in the form of cash and/or player contracts and/or draft choices.

The current compensation rule will stay in effect through the 1980-81 NBA playing season so that until then a player who has completed his contract is free to negotiate and sign a player contract with another NBA team, subject only to the current compensation rule.

At the end of the 1980-81 NBA playing season and lasting through the end of the 1986-87 NBA playing season, no compensation rule of any kind shall be applicable to such player in the NBA; and such player may negotiate with any other NBA team or teams subject only to a right of first refusal (as described in the Stipulation and Settlement Agreement) in the team with whom his contract is expiring, and that team may retain the player's services only by matching or exceeding the offer accepted by the player for his services from another NBA team;

For purposes of application of the compensation and first refusal rules, a player may begin negotiating with any NBA team at the end of the play-offs in the last NBA season covered by his contract.

4. The current NBA college draft, option clause and compensation rule will not be reinstituted.

B. Settlement Fund - The NBA member teams have agreed to pay the aggregate sum of $4,300,000 (1/18th for each NBA team) to the plaintiffs and members of the class in full satisfaction of all damage claims asserted by plaintiffs on behalf of the class in this action. The payments will be made to 479 class members in eight equal annual installments of $537,500, the first of which is contemporaneously being paid into escrow. Each class member's share of the Settlement Fund has been calculated according to the formula set forth below which is based on the number of years each class member played in the NBA during the applicable ten-year period covered by this action (the 1966-67 NBA playing season through the 1975-76 NBA playing season). The NBA and its member teams did not participate in the determination of the formula.

Under this formula, each playing season in that period has been assigned a specific unit value. The earlier seasons in that ten-year period have been assigned a relatively higher unit value than more recent seasons in recognition of the varying extent of competition for players' services in professional basketball. The units for each year are as follows:

Playing Season	Units	
1966-67	Four	(4)
1967-68	Three	(3)
1968-69	Two	(2)
1969-70	Two	(2)
1970-71	One	(1)
1971-72	One	(1)
1972-73	One-half	(1/2)
1973-74	One-half	(1/2)
1974-75	One-half	(1/2)
1975-76	One-half	(1/2)
TOTAL:	Fifteen	(15)

The total number of units to which any class member who played in each year of the ten-year period would be entitled is 15. Unless modified by the Court upon presentation of sufficient proof at the hearing of June , 1976, the aggregate number of units for all class members is 2,159 (based on the statistical information contained in the Official NBA Guides) with each unit having a dollar value of $1,991. The dollar value of each unit is calculated by dividing the $4.3 million Settlement Fund by the total number of units for the entire class and each member's share of the Settlement Fund is calculated by multiplying his number of units by the dollar value of each unit. Class members who played at least one game but fewer than twenty-five regular season games in any season in the ten-year period and who were not on an active or injured list for more than one-half of any such playing season, shall receive only one-half of the number of units assigned for that playing season. The application of the formula to each class member is set forth in the Plan of Distribution on file with the Court. The number of units you are entitled to is ____, which represents your share in the Settlement Fund in the amount of $_____.

The first installment, and if necessary, any subsequent installment of the Settlement Fund will be held in escrow and mailed to you upon the expiration or determination of any appeal taken from this Court's judgment approving this settlement. The next installments of the settlement amount due to you will be mailed on or before May 1 of each year through 1983. The obligation to pay the Settlement Fund will be secured by proceeds of television network revenues which will be directly paid into a bank account for the benefit of the class.

You are required to maintain a current address on file

with both the National Basketball Players Association, 15 Columbus Circle, New York, New York 10023, c/o Lawrence Fleisher, and with Weil, Gotshal & Manges, 767 Fifth Avenue, New York, New York 10022, counsel of record for plaintiffs and the class, c/o Peter Gruenberger and James W. Quinn, and to make written notification to them about all address changes until the end of 1983 as soon as they occur. All inquiries concerning the application of this formula and/or the payment of settlement amount should be directed to Messrs. Fleisher, Gruenberger and/or Quinn at the addresses set forth above.

C. Attorneys' Fees - If the settlement is approved by the Court, the NBA member teams will pay all attorneys' fees, costs and disbursements actually incurred from 1970 until the Closing Date as defined in the Stipulation and Settlement Agreement by and on behalf of the plaintiffs and the class in connection with the issues raised in and prosecution of this class action since 1970, subject to Court approval. All such amounts will be paid in addition to and will not be subtracted from the Settlement Fund referred to above. Class members who have paid special assessments towards counsel fees shall be reimbursed therefor from the attorneys' fees approved by the Court. The amount of attorneys' fees will be limited to the standard hourly rate normally charged by counsel for the class members. A description of such attorneys' fees, costs and disbursements through the date hereof and the manner of payment thereof is set forth in the fee application of class counsel on file with the Court.

D. Enforcement By Special Master - The Court will retain jurisdiction of the action and the parties, and will appoint a Special Master to enforce the provisions and terms of the Stipulation and Settlement Agreement.

III. Hearing

NOTICE IS HEREBY GIVEN to all class members that a hearing will be held before the Court on June , 1976 at 10:00 A.M. in Room , at the United States Courthouse for the Southern District of New York, Foley Square, New York, New York to finally approve the proposed settlement on the grounds that it is fair, reasonable and adequate. If so approved, the Court will enter a judgment dismissing this action with prejudice in accordance with the Stipulation and Settlement Agreement, which contains a covenant on behalf of the class members not to sue with respect to the claims alleged in this action.

IF YOU ARE SATISFIED WITH THIS PROPOSED SETTLEMENT, YOU NEED NOT APPEAR AT THE HEARING NOR TAKE ANY ACTION. However, if you object to the fairness, reasonableness and adequacy of the settlement (including the application of the Settlement formula to you) as described above, you may appear at such hearing to show cause why such settlement should not be finally approved, provided that you serve no later than May , 1976: (i) a written notice of intention to appear; and (ii) copies of any and all papers, affidavits and briefs you will submit in opposition to the settlement, upon (a) the Clerk of the Court at the address set forth below, (b) Weil, Gotshal & Manges, attorneys of record for plaintiffs and the class, at the address set forth above, and (c) Proskauer Rose Goetz & Mendelsohn, 300 Park Avenue, New York, New York 10022, attorneys of record for the NBA.

At the hearing on June , 1976, any member of the class may appear and present any proper argument and evidence, but no person not a class member will be heard and no papers will be received unless the service of the notice of intention to appear and the papers, affidavits and briefs referred to above has been timely made.

For a more complete and detailed statement of the matters involved in this litigation and in the proposed settlement, reference is made to the proceedings and all other pleadings and papers on file with the Court.

By Order of the Court.

Dated: New York, New York
April , 1976

CLERK
United States District Court
Southern District of New York
Federal Courthouse
Foley Square
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., Plaintiffs, -against- NATIONAL BASKETBALL ASSOCIATION, et al., Defendants.	70 Civ. 1526 (RLC)

PLAN OF DISTRIBUTION

This Plan of Distribution is being filed with the Court in order to describe the manner of allocation of the Settlement Fund of $4,300,000 payable to the class members by the members of the National Basketball Association ("NBA"), who together with the NBA are the Settling Defendants. The terms of settlement relating to the Settlement Fund, the manner of payment thereof and the security given therefor, are set forth in paragraph 3 of the Stipulation and Settlement Agreement, dated April 29, 1976, filed simultaneously with this Court. The terms of settlement dealing with the modification and/or elimination of certain NBA practices are not dealt with in this Plan of Distribution.

I. The Settlement Fund

The NBA member teams have agreed to pay, subject to the terms of the Stipulation and Settlement Agreement, the aggregate sum of $4,300,000 to the members of the class as part of the settlement of this action. The payments will be made to the 479 class members, who are listed on the annexed Settlement Fund Allocation and Payment Schedule (the "Schedule") in eight equal

annual installments, commencing this year and continuing through 1983. Each annual installment of the Settlement Fund, which is secured by proceeds of network television revenues of NBA games, will be deposited into a bank account for the benefit of the class, from which account individual checks will be sent to the class members each year representing 1/8 of each class member's share of the Settlement Fund. The National Basketball Players Association ("Players Association") will act as Receiving Agent for the class members so as to aid in delivery of the Settlement Fund installments to the class. For this purpose the members of the class have been requested to maintain a current address on file both with the Players Association, c/o Lawrence Fleisher, 15 Columbus Circle, New York, New York 10023 and with Weil, Gotshal & Manges, c/o Peter Gruenberger, 767 Fifth Avenue, New York, New York 10022, counsel of record for plaintiffs and class members in this action.

The Stipulation and Settlement Agreement provides procedures for enforcement of the obligation to pay the installments of the Settlement Fund.

II. The Formula

The NBA defendants did not participate in determining the allocation of the Settlement Fund among the class members according to this Plan of Distribution.

The class comprises all players who have played at least one regular season game in the NBA since the season which includes April 16, 1970 to the date of judgment entered by this Court. Each class member's share of the Settlement Fund has been calculated according to the formula set forth below which is based on the number of years each such class member played in the NBA during the applicable ten-year damage period from the 1966-67 NBA playing season through the 1975-76 playing season. These ten playing

seasons comprise the applicable damage period since (i) the action was commenced in April 1970 and (ii) the four year statute of limitations period extends back to April 1966.

The settlement provides two different benefits for the class members -- participation in the Settlement Fund and changes in NBA practices which permit increased competition for players' services.* The formula is designed to take into account both types of benefits. Under this formula, each playing season has been assigned a specific unit value. The earlier seasons in the ten-year period have been assigned a relatively higher unit value than more recent seasons in recognition of the varying extent of competition for players' services in professional basketball. Thus under this formula, class members who played in the NBA during such earlier seasons shall receive relatively larger shares in the Settlement Fund than players who have played the same number of seasons, but in later more competitive years. Many of the players who played in the earlier years are either retired or about to retire and will not therefore enjoy the economic benefits of the increased competition for players' services which will necessarily result in the future from the modification or elimination of certain NBA practices as set forth in the Stipulation and Settlement Agreement. Such increased competition will inure principally to the benefit of the newer NBA players who will be able to obtain direct and substantial economic gains from their increased ability to negotiate and sign a contract with more than one NBA team for their services in the future.

* The prosecution of this action since 1970, apart from the settlement, has bestowed additional benefits on the class members by virtue of maintaining and increasing competition for players' services.

The units for each year are as follows:

Playing Season		
1966-67	Four	(4)
1967-68	Three	(3)
1968-69	Two	(2)
1969-70	Two	(2)
1970-71	One	(1)
1971-72	One	(1)
1972-73	One-half	(1/2)
1973-74	One-half	(1/2)
1974-75	One-half	(1/2)
1975-76	One-half	(1/2)
Total:	Fifteen	(15)

The total number of units to which any class member who played in each year of the ten-year period would be entitled is 15. The aggregate number of units for all class members is 2,159 (based on the statistical information contained in the Official NBA Guides), with each unit having a dollar value of approximately $1,990 . The dollar value of each unit has been calculated by dividing the $4.3 million Settlement Fund by the total number of units for the entire class. Each class member's share (as shown on the annexed Schedule) has been calculated by multiplying the number of units to which such class member is entitled by the dollar value of each unit. Class members who played in at least one game but fewer than twenty-five regular season games in any playing season in the ten-year period and who were not on the active and/or injured list of an NBA team for more than one-half of such playing season shall receive only one-half of the number of units assigned for that playing season. Class members who played in at least twenty-five regular season games in any such season, or who were on the active or injured list for more than one-half of such season, or who elected not to render services in the season of an option year and thereafter played in the NBA for a full season or more, shall receive the full number of units assigned for such season.

Allocating the Settlement Fund according to years of service in the NBA is the normal procedure followed in allocating benefits to NBA players. For example, players' qualification for pension and severance rights, as well as the determination of the amounts due players for pension and severance, have always been based on each player's number of years of service in the NBA.

III. The Allocation of Settlement Fund and Payment Schedule

Annexed hereto is a Schedule setting forth the name of each class member, the number of units and the total share of the Settlement Fund to which each class member is entitled as calculated according to the formula, and the amount of the annual cash installment to be made to each such class member. The checks to be delivered from the bank account each year under the Stipulation and Settlement Agreement shall be prepared in accordance with the Schedule.

Dated: New York, New York
April 29, 1976

WEIL, GOTSHAL & MANGES

By /s/ Peter Greenberger
(A Member of the Firm)
Attorneys for Plaintiffs and
Class Members
767 Fifth Avenue
New York, New York 10022

$4.3 Million
2,159.00 Units
1 Unit=$1991.6628

SETTLEMENT FUND ALLOCATION
AND PAYMENT SCHEDULE

Class Member	Units	Total Share	Annual Installment
1. Abdul-Aziz, Zaid	7.75	$15,435.39	$ 1,929.42
2. Abdul-Jabbar, Kareem	6	$11,949.98	$ 1,493.75
3. Abdul-Rahman, Mahdi	14	$27,883.28	$ 3,485.41
4. Adams, Alvan	.50	$ 995.83	$ 124.48
5. Adams Don	4	$ 7,966.65	$ 995.83
6. Adelman, Rick	7.50	$14,937.47	$ 1,867.18
7. Allen, Lucius	6	$11,949.98	$ 1,493.75
8. Allison, Odis	1	$ 1,991.66	$ 248.96
9. Anderson, Cliff	6	$11,949.98	$ 1,493.75
10. Anderson, Dan	1	$ 1,991.66	$ 248.96
11. Anderson, Jerome	.50	$ 995.83	$ 124.48
12. Anderzunas, Wally	2	$ 3,983.33	$ 497.92
13. Archibald, Nate	4	$ 7,966.65	$ 995.83
14. Ard, James	1	$ 1,991.66	$ 248.96
15. Arnzen, Bob	1	$ 1,991.66	$ 248.96
16. Arthurs, John	1	$ 1,991.66	$ 248.96
17. Attles, Alvin	13	$25,891.62	$ 3,236.45
18. Awtrey, Dennis	4	$ 7,966.65	$ 995.83
19. Bailey, Gus	1	$ 1,991.66	$ 248.96
20. Bantom, Mike	1.50	$ 2,987.49	$ 373.44
21. Barnes, Jim	11.50	$22,904.12	$ 2,863.02

Class Member	Units	Total Share	Annual Installment
22. Barnett, Jim	15	$29,874.94	$ 3,734.36
23. Barnett, Richard	13.75	$27,385.36	$ 3,423.17
24. Barr, Moe	1	$ 1,991.66	$ 248.96
25. Barry, Rick	8	$15,933.30	$ 1,991.66
26. Bartolome, Vic	1	$ 1,991.66	$ 248.96
27. Baskerville, Jerry	.50	$ 995.83	$ 124.48
28. Baum, John	2	$ 3,983.33	$ 497.92
29. Baylor, Elgin	12.50	$24,895.79	$ 3,111.97
30. Beard, Alfred "Butch"	5	$ 9,958.31	$ 1,244.79
31. Beaty, Zelmo	11.50	$22,904.12	$ 2,863.02
32. Behagen, Ron	1.50	$ 2,987.49	$ 373.44
33. Bell, Dennis	1	$ 1,991.66	$ 248.96
34. Bellamy, Walter	14.25	$28,381.19	$ 3,547.58
35. Benbow, Leon	1	$ 1,991.66	$ 248.96
36. Bibby, C. Henry	2	$ 3,983.33	$ 497.92
37. Bigelow, Bob	.50	$ 995.83	$ 124.48
38. Bing, David	15	$29,874.94	$ 3,734.36
39. Black, Tom	1	$ 1,991.66	$ 248.96
40. Block, John	15	$29,874.94	$ 3,734.36
41. Boerwinkle, Tom	8	$15,933.30	$ 1,991.66
42. Boozer, Robert	12	$23,899.95	$ 2,987.49

Class Member	Units	Total Share	Annual Installment
43. Boswell, Tom	.50	$ 995.83	$ 124.48
44. Bowman, Nate	12	$23,899.95	$ 2,987.49
45. Boyd, Fred	2	$ 3,983.33	$ 497.92
46. Boyd, Ken	.25	$ 497.92	$ 62.24
47. Bracey, Steve	1.50	$ 2,987.49	$ 373.44
48. Bradley, William	11	$21,908.29	$ 2,738.54
49. Brewer, Jim	1.50	$ 2,987.49	$ 373.44
50. Bridgeman, Junior	.50	$ 995.83	$ 124.48
51. Bridges, William	14.50	$28,879.11	$ 3,609.88
52. Brisker, John	1.50	$ 2,987.49	$ 373.44
53. Bristow, Allan	1	$ 1,991.66	$ 248.96
54. Brokaw, Gary	1	$ 1,991.66	$ 248.96
55. Brown, Fred	3	$ 5,974.99	$ 746.87
56. Brown, John	1.50	$ 2,987.49	$ 373.44
57. Brown, Roger	.50	$ 995.83	$ 124.48
58. Bryant, Emmette	13	$25,891.62	$ 3,236.45
59. Bryant, Joe	.50	$ 995.83	$ 124.48
60. Burleson, Tom	1	$ 1,991.66	$ 248.96
61. Caldwell, Joe	11	$21,908.29	$ 2,738.54
62. Calhoun, Dave"Corky"	2	$ 3,983.33	$ 497.92
63. Cannon, Larry	.25	$ 497.92	$ 62.24

Class Member	Units	Total Share	Annual Installment
64. Carlson, Al	.25	$ 497.92	$ 62.24
65. Carr, Austin	3	$ 5,974.99	$ 746.87
66. Carter, Fred	6	$11,949.98	$ 1,493.75
67. Catchings, Harvey	1	$ 1,991.66	$ 248.96
68. Catlett, Sid	.50	$ 995.83	$ 124.48
69. Chamberlain, Bill	.50	$ 995.83	$ 124.48
70. Chamberlain, Wilt	13.50	$26,887.45	$ 3,360.93
71. Chambers, Jerry	8	$15,933.30	$ 1,991.66
72. Chaney, Don	7.50	$14,937.47	$ 1,867.18
73. Chappell, Len	12	$23,899.95	$ 2,987.49
74. Charles, Ken	1.50	$ 2,987.49	$ 373.44
75. Chenier, Phil	3	$ 5,974.99	$ 746.87
76. Chones, Jim	1	$ 1,991.66	$ 248.96
77. Chris[illegible] Bob	3	$ 5,974.99	$ 746.87
78. Clark, [illegible]ie	15	29,874.94	$ 3,734.36
79. Cleamons, Jim	3	$ 5,974.99	$ 746.87
80. Clemens, Barry	15	$ 29,874.94	$ 3,734.36
81. Clyde, Benjamin	.50	$ 995.83	$ 124.48
82. Coleman, E. C.	1.50	$ 2,987.49	$ 373.44
83. Collins, Doug	1.50	$ 2,987.49	$ 373.44
84. Collins, Jimmy	1.50	$ 2,987.49	$ 373.44

Class Member	Units	Total Share	Annual Installment
85. Cooke, Joe	1	$ 1,991.66	$ 248.96
86. Counts, Mel	15	$29,874.94	$ 3,734.36
87. Cousy, Bob	1	$ 1,991.66	$ 248.96
88. Cowens, Dave	4	$ 7,966.65	$ 995.83
89. Crawford, Fred	12	$23,899.95	$ 2,987.49
90. Creighton, Jim	.50	$ 995.83	$ 124.48
91. Cross, Pete	2.50	$ 4,979.16	$ 622.39
92. Cunningham, Dick	7.50	$14,937.47	$ 1,867.18
93. Cunningham, William	14	$27,883.28	$ 3,485.41
94. Dandridge, Bob	6	$11,949.98	$ 1,493.75
95. D'Antoni, Mike	1.25	$ 2,489.58	$ 311.20
96. Dark, Jesse	.50	$ 995.83	$ 124.48
97. Davis, Bob	.25	$ 497.92	$ 62.24
98. Davis, Charlie	1.75	$ 3,485.41	$ 435.68
99. Davis, Dwight	2	$ 3,983.33	$ 497.92
100. Davis, Jim	10.50	$20,912.46	$ 2,614.06
101. Davis, Mel	1.50	$ 2,987.49	$ 373.44
102. Davis, "Mickey" Ed	2	$ 3,983.33	$ 497.92
103. Davis, Michael	4.25	$ 8,464.57	$ 1,058.07
104. Dawkins, Darryl	.50	$ 995.83	$ 124.48
105. DeBusschere, David	14	$27,883.28	$ 3,485.40

Class Member	Units	Total Share	Annual Installment
06. Derline, Rod	1	$ 1,991.66	$ 248.96
07. Dickey, Derrek	1.50	$ 2,987.49	$ 373.44
08. Dierking, Connie	12	$23,899.95	$2,987.49
09. DiGregorio, Ernie	1.50	$ 2,987.49	$ 373.44
10. Dinkins, Jackie	.50	$ 995.83	$ 124.48
11. Dinwiddie, Bill	6.50	$12,945.81	$1,618.23
12. Dischinger, Terry	9.50	$18,920.80	$2,365.10
13. Downing, Steve	.75	$ 1,493.75	$ 186.72
14. Drew, John	1	$ 1,991.66	$ 248.96
15. Driscoll, Ed "Terry"	3.25	$ 6,472.90	$ 809.11
16. Dudley, Charles	1.25	$ 2,489.58	$ 311.20
17. Durret, Ken	2.50	$ 4,979.16	$ 622.39
18. DuVal, Dennis	.75	$ 1,493.75	$ 186.72
19. Eberhard, Al	1	$ 1,991.66	$ 248.96
120. Egan, John	13	$25,891.62	$3,236.45
121. Ellis, Joseph	14	$27,883.28	$3,485.41
122. Ellis, LeRoy	15	$29,874.94	$3,734.36
123. English, Claude	.50	$ 995.83	$ 124.48
124. English, Scott	.50	$ 995,83	$ 124.48
125. Erickson, Keith	15	$29,874.94	$3,734.36
126. Fernsten, Eric	.50	$ 995.83	$ 124.48
127. Fillmore, Greg	1.50	$ 2,987.49	$ 373.44

Class Member	Units	Total Share	Annual Installment
128. Finkel, Henry	14.50	$28,879.11	$3,609.88
129. Fogle, Larry	.25	$ 497.92	$ 62.24
130. Fontaine, Levi	1	$ 1,991.66	$ 248.96
131. Ford, Chris	2	$ 3,983.33	$ 497.92
132. Ford, Con	.50	$ 995.83	$ 124.48
133. Ford, Jake	1.50	$ 2,987.49	$ 373.44
134. Foster, Fred	7.50	$14,937.47	$1,867.18
135. Fox, Harold	.25	$ 497.92	$ 62.24
136. Fox, Jim	11	$21,908.29	$2,738.54
137. Frazier, Walt	11	$21,908.29	$2,738.54
138. Free, Lloyd	.50	$ 995.83	$ 124.48
139. Freeman, Don	.50	$ 995.83	$ 124.48
140. Freeman, Gary	1	$ 1,991.66	$ 248.96
141. Freeman, Rod	.50	$ 995.83	$ 124.48
142. Fryer, Bernie	1	$ 1.991.66	$ 248.96
143. Gambee, Dave	11	$21,908.29	$2,738.54
144. Garrett, Eldo	5	$ 9,958.31	$1,244.79
145 Garrett, Rowland	2	$ 3,983.33	$ 497.92
146. Garvin, Jim	.25	$ 497.92	$ 62.24
147. Giannelli, John	2	$ 3,983.33	$ 497.92
148. Gibbs, Dick	3	$ 5,974.99	$ 746.87
149. Gilliam, Herman	6	$11,949.98	$1,493.75

Class Member	Units	Total Share	Annual Installment
150. Gilmore, Walt	1	$ 1,991.56	$ 248.96
151. Glover, Clarence	1	$ 1,991.66	$ 248.96
152. Goodrich, Gail	15	$29,874.942	$3,734.36
153. Grant, Travis	.75	$ 1,493.75	$ 186.72
154. Gray, Leonard	1	$ 1,991.66	$ 248.96
155. Greacen, Robert	2.50	$ 4,979.16	$ 622.40
156. Green, John	13.50	$26,887.45	$3,360.93
157. Green, Lamar	5.25	$10,456.23	$1,307.03
158. Green, Luther	.25	$ 497.92	$ 62.24
159. Greer, Harold	13.50	$26,887.45	$3,360.93
160. Gregor, Gary	6.25	$12,447.89	$1,555.99
161. Grevey, Kevin	.50	$ 995.83	$ 124.48
162. Gross, Bob	.50	$ 995.83	$ 124.48
163. Guerin, Richard	7	$13,941.64	$1,742.70
164. Guokas, Matt	15	$29,874.94	$3,734.36
165. Hairston, Al	3	$ 5,974.99	$ 746.87
166. Hairston, Harold	14.50	$28,879.11	$3,609.88
167. Hairston, Lindsay	.50	$ 995.83	$ 124.48
168. Halimon, Shaler	5.50	$10,954.15	$1,369.27
169. Halliburton, Jeff	1.50	$ 2,987.49	$ 373.44
170. Hankinson, Phil	1	$ 1,991.66	$ 248.96

Class Member	Units	Total Share	Annual Installment
171. Hansen, Glenn	.50	$ 995.83	$ 124.48
172. Harris, Arthur	5.50	$10,954.15	$1,369.27
173. Harris, Bernard	.25	$ 497.92	$ 62.24
174. Haskins, Clem	11	$21,908.29	$2,738.54
175. Havlicek, John	15	$29,874.93	$3,734.36
176. Hawes, Steve	1	$ 1,991.66	$ 248.96
177. Hawkins, Connie	6	$11,949.98	$1,493.75
178. Hawkins, Robert	.50	$ 995.83	$ 124.48
179. Hawthorne, Nate	1.50	$ 2,987.49	$ 373.44
180. Hayes, Elvin	8	$15,933.30	$1,991.66
181. Haywood, Spencer	4	$ 7,966.65	$ 995.83
182. Heany, Brian	1	$ 1,991.66	$ 248.96
183. Heard, Gar	4	$ 7,966.65	$ 995.83
184. Henderson, Thomas	1	$ 1,991.66	$ 248.96
185. Henry, Al	1.50	$ 2,987.49	$ 373.44
186. Hetzel, Fred	12	$23,899.95	$2,987.50
187. Hewitt, William	6.75	$13,443.72	$1,680.47
188. Hilton, Fred	1.50	$ 2,987.49	$ 373.44
189. Holland, Wilbur	.50	$ 995.83	$ 124.48
190. Hollins, Lionel	.50	$ 995.83	$ 124.48
191. Holt, A.W.	.50	$ 995.83	$ 124.48
192. Hosket, Wilmer (Bill)	6	$11,949.98	$1,493.75
193. Howard, Greg	2	$ 3,893.33	$ 497.92

Class Member	Units	Total Share	Annual Installment
194. Howell, Bailey	12	$23,899.95	$2,987.49
195. Hudson, Louis	15	$29,874.94	$3,734.36
196. Hummer, John	4	$ 7,966.65	$ 995.83
197. Hyder, Greg	1	$ 1,991.66	$ 248.96
198. Imhoff, Darrall	13	$25,891.62	$3,236.45
199. Ingelsby, Tom	.50	$ 995.83	$ 124.48
200. Jackson, Gregg	.50	$ 995.83	$ 124.48
201. Jackson, Lucius	13	$25,891.62	$3,236.45
202. Jackson, Phil	11	$21,908.29	$2,738.54
203. Jackson, Wardell	.50	$ 995.83	$ 124.48
204. James, Aaron	1	$ 1,991.66	$ 248.96
205. Johnson, Charles	2	$ 3,983.33	$ 497.92
206. Johnson, George E.	1.25	$ 2,489.58	$ 311.20
207. Johnson, George T.	2	$ 3,983.33	$ 497.92
208. Johnson, Gus	13.25	$26,389.53	$3,298.69
209. Johnson, John	4	$ 7,966.65	$ 995.83
210. Johnson, Neil	11	$21,908.29	$2,738.54
211. Johnson, Ollie	2	$ 3,983.33	$ 497.92
212. Johnson, Rich	4.50	$ 8,962.48	$1,120.31
213. Johnson, Wallace	1.00	$ 1,991.66	$ 248.96
214. Jones, Dwight	1.50	$ 2,987.49	$ 373.44

	Class Member	Units	Total Share	Annual Installment
215.	Jones, Jake	.50	$ 995.83	$ 124.48
216.	Jones, James	1	$ 1,991.66	$ 248.96
217.	Jones, Ryan (Nick)	5	$ 9,958.31	$1,244.79
218.	Jones, Steve	.50	$ 995.83	$ 124.48
219.	Jones, Wali	13.75	$27,385.36	$3,423.17
220.	Jones, Walter "Larry"	.50	$ 995.83	$ 124.48
221.	Kauffman, Robert	7.50	$14,937.47	$1,867.18
222.	Kelley, Rich	.50	$ 995.83	$ 124.48
223.	Kelso, Ben	.50	$ 995.83	$ 124.48
224.	Kendrick, Frank	.25	$ 497.92	$ 62.24
225.	Kennedy, Joe	3	$ 5,974.99	$ 746.87
226.	Killum, Earnest	.50	$ 995.83	$ 124.48
227.	Kimball, Toby	14.25	$28,381.19	$3,547.64
228.	King, James	13.50	$26,887.45	$3,360.93
229.	Knight, Ron	2	$ 3,983.33	$ 497.92
230.	Kojis, Donald	14.50	$28,879.11	$3,609.88

	Class Member	Units	Total Share	Annual Installment
231.	Komives, Howard	14	$ 27,883.28	$ 3,485.41
232.	Kosmalski, Len	.75	$ 1,493.75	$ 186.72
233.	Kozelko, Tom	1.50	$ 2,987.49	$ 373.44
234.	Kropp, Tom	.50	$ 995.83	$ 124.48
235.	Kuberski, Steve	6	$ 11,949.98	$ 1,493.75
236.	Kunnert, Kevin	1.50	$ 2,987.49	$ 373.44
237.	Kupec, C. J.	.50	$ 995.83	$ 124.48
238.	Lacey, Sam	4	$ 7,966.65	$ 995.83
239.	Lambert, John	.50	$ 995.83	$ 124.48
240.	Lanier, Robert	4	$ 7,966.65	$ 995.83
241.	Lantz, Stuart	8	$ 15,933.30	$ 1,991.66
242.	Laskowski, John	.50	$ 995.83	$ 124.48
243.	Layton, Dennis	1.75	$ 3,485.41	$ 435.68
244.	Leaks, Manny	1	$ 1,991.66	$ 248.96
245.	Lee, Clyde	15	$ 29,874.94	$ 3,734.36
246.	Lee, Greg	.25	$ 497.92	$ 62.24
247.	Lee, Russell	1.25	$ 2,489.58	$ 311.20
248.	Lewis, Bob	8	$ 15,933.30	$ 1,991.66
249.	Ligon, Bill	.50	$ 995.83	$ 124.48
250.	Long, Paul	7	$ 13,941.64	$ 1,742.70
251.	Loughery, Kevin	13.50	$ 26,887.45	$ 3,360.93
252.	Love, Robert	15	$ 29,874.94	$ 3,734.36
253.	Love, Stanley	2.50	$ 4,979.16	$ 622.39

	Class Member	Units	Total Share	Annual Installment
254.	Lowery, Charles	.50	$ 995.83	$ 124.48
255.	Lucas, Jerry	14	$ 27,883.28	$ 3,485.41
256.	Lumkin, Phil	1	$ 1,991.66	$ 248.96
257.	Lynn, Mike	2.50	$ 4,979.16	$ 622.40
258.	Macaluso, Mike	.50	$ 995.83	$ 124.48
259.	Manakas, Ted	.25	$ 497.92	$ 62.24
260.	Manning, Edward	8	$ 15,933.30	$ 1,991.66
261.	Maravich, Peter	4	$ 7,966.65	$ 995.83
262.	Marin, Jack	15	$ 29,874.94	$ 3,734.36
263.	Marlatt, Harvey	2.25	$ 4,481.24	$ 560.16
264.	Marsh, Jim	.50	$ 995.83	$ 124.48
265.	Marshall, Vester	.25	$ 497.92	$ 62.24
266.	Martin, LaRue	2	$ 3,983.33	$ 497.92
267.	Mast, Eddie	2.50	$ 4,979.16	$ 622.40
268.	May, Donald	7.50	$ 14,937.47	$ 1,867.18
269.	Mayes, Clyde	.50	$ 995.83	$ 124.48
270.	Mayfield, Ken	.25	$ 497.92	$ 62.24
271.	McAdoo, Bob	2	$ 3,983.33	$ 497.92
272.	McCarter, Willie	4	$ 7,966.65	$ 995.83
273.	McCracken, Paul	.75	$ 1,493.75	$ 186.72
274.	McDaniels, Jim	1.75	$ 3,485.41	$ 435.68
275.	McDonald, Glenn	1	$ 1,991.66	$ 248.96
276.	McElroy, Jim	.50	$ 995.83	$ 124.48
277.	McGinnis, George	.50	$ 995.83	$ 124.48

	Class Member	Units	Total Share	Annual Installment
278.	McGlocklin, Jon	15	$ 29,874.94	$ 3,734.36
279.	McGregor, Gil	1	$ 1,991.66	$ 248.96
280.	McGuire, Allie	.25	$ 497.92	$ 62.24
281.	McIntosh, Kennedy	2.25	$ 4,481.24	$ 560.16
282.	McKenzie, Stanley	9.75	$ 19,418.71	$ 2,427.34
283.	McLemore, McCoy	13	$ 25,891.62	$ 3,236.45
284.	McMillen, Tom	.50	$ 995.83	$ 124.48
285.	McMillian, Jim	4	$ 7,966.65	$ 995.83
286.	McNeill, Larry	1.50	$ 2,987.49	$ 373.44
287.	McWilliams, Eric	.50	$ 995.83	$ 124.48
288.	Meely, Cliff	3	$ 5,974.99	$ 746.87
289.	Melchionni, Gary	1	$ 1,991.66	$ 248.96
290.	Meminger, Dean	3	$ 5,974.99	$ 746.87
291.	Mengelt, John	3	$ 5,974.99	$ 746.87
292.	Meriweather, Joe	.50	$ 995.83	$ 124.48
293.	Meschery, Thomas	12	$ 23,899.95	$ 2,987.49
294.	Meyers, David	.50	$ 995.83	$ 124.48
295.	Mikan, George Larry	1	$ 1,991.66	$ 248.96
296.	Miles, Eddie	13	$ 25,891.62	$ 3,236.45
297.	Minor, Mark	.25	$ 497.92	$ 62.24
298.	Mix, Steve	5	$ 9,958.31	$ 1,244.79
299.	Money, Eric	1	$ 1,991.66	$ 248.96
300.	Monroe, Earl	11	$ 21,908.29	$ 2,738.54
301.	Moore, Otto	8	$ 15,933.30	$ 1,991.66

	Class Member	Units	Total Share	Annual Installment
302.	Morgan, Rex	2	$ 3,983.33	$ 497.92
303.	Mueller, Erwin	13.25	$ 26,389.53	$ 3,298.70
304.	Mullins, Jeffrey	15	$ 29,874.94	$ 3,734.36
305.	Murphy, Calvin	4	$ 7,966.65	$ 995.83
306.	Murrey, Dorie	13	$ 25,891.62	$ 3,236.45
307.	Nash, Bob	1	$ 1,991.66	$ 248.96
308.	Neal, Lloyd	2	$ 3,983.33	$ 497.92
309.	Nelson, Barry	1	$ 1,991.66	$ 248.96
310.	Nelson, Donald	15	$ 29,874.94	$ 3,734.36
311.	Nelson, Louis	1.50	$ 2,987.49	$ 373.44
312.	Newlin, Mike	3	$ 5,974.99	$ 746.87
313.	Newmark, David	4	$ 7,966.65	$ 995.83
314.	Niemann	3	$ 5,974.99	$ 746.87
315.	Norman, Daniel	.75	$ 1,493.75	$ 186.72
316.	Norwood, Willie	3	$ 5,974.99	$ 746.87
317.	Ogden, Carlos (Bud)	3	$ 5,974.99	$ 746.87
318.	Ogden, Ralph	1	$ 1,991.66	$ 248.96
319.	Ohl, Don	11	$ 21,908.29	$ 2,738.54
320.	Oleynick, Frank	.50	$ 995.83	$ 124.48
321.	O'Malley, Grady	1	$ 1,991.66	$ 248.96
322.	Owens, Jim	1	$ 1,991.66	$ 248.96
323.	Patterson, Steve	3	$ 5,974.99	$ 746.87
324.	Patterson, Tom	.75	$ 1,493.75	$ 186.72
325.	Paulk, Charles	3.50	$ 6,970.82	$ 871.35

	Class Member	Units	Total Share	Annual Installment
326.	Payne, Thomas	1	$ 1,991.66	$ 248.96
327.	Perry, Curtis	4	$ 7,966.65	$ 995.83
328.	Petersen, Loy	4	$ 7,966.65	$ 995.83
329.	Petrie, Geoffrey	4	$ 7,966.65	$ 995.83
330.	Pondexter, Cliff	.50	$ 995.83	$ 124.48
331.	Porter, Howard	3	$ 5,974.99	$ 746.87
332.	Porter, Kevin	2	$ 3,983.33	$ 497.92
333.	Portman, Bob	4.50	$ 8,962.48	$ 1,120.31
334.	Price, Jim	2	$ 3,983.33	$ 497.92
335.	Price, Mike	2	$ 3,983.33	$ 497.92
336.	Quick, Bob	5.50	$ 10,954.15	$ 1,369.27
337.	Rackley, Luther	4.50	$ 8,962.48	$ 1,120.31
338.	Ratleff, Ed	1.50	$ 2,987.49	$ 373.44
339.	Ratliff, Mike	.75	$ 1,493.75	$ 186.72
340.	Ray, Clifford	3	$ 5,974.99	$ 746.87
341.	Reaves, Joe	.25	$ 497.92	$ 62.24
342.	Reed, Willis	15	$ 29,874.94	$ 3,734.36
343.	Restani, Kevin	1	$ 1,991.66	$ 248.96
344.	Reynolds, George	1	$ 1,991.66	$ 248.96
345.	Ridgle, Jackie	1	$ 1,991.66	$ 248.96
346.	Riker, Tom	1	$ 1,991.66	$ 248.96
347.	Riley, Bob	.50	$ 995.83	$ 124.48
348.	Riley, Patrick	11	$ 21,908.29	$ 2,738.53
349.	Riley, Ron	2	$ 3,983.33	$ 497.92

	Class Member	Units	Total Shares	Annual Installment
350.	Rinaldi, Rich	1.75	$ 3,485.41	$ 435.68
351.	Riordan, Mike	8	$ 15,933.30	$ 1,991.66
352.	Roberson, Rick	6	$ 11,949.98	$ 1,493.75
353.	Robertson, Oscar	14	$ 27,883.28	$ 3,485.40
354.	Robinson, Flynn	13.50	$ 26,887.45	$ 3,360.93
355.	Robinson, Len	1	$ 1,991.66	$ 248.96
356.	Robinzine, Bill	.50	$ 995.83	$ 124.48
357.	Roche, John	.25	$ 497.92	$ 62.24
358.	Rodgers, Guy	11	$ 21,908.29	$ 2,738.54
359.	Rowe, Curtis	3	$ 5,974.99	$ 746.87
360.	Ruffner, Paul	2	$ 3,983.33	$ 497.92
361.	Rule, Bobby	10.25	$ 20,414.54	$ 2,551.82
362.	Russell, Cazzie	15	$ 29,874.94	$ 3,734.36
363.	Russell, Frank	.50	$ 995.83	$ 124.48
364.	Russell, Michael ("Campy")	1	$ 1,991.66	$ 248.96
365.	Sanders, Thomas	13.50	$ 26,887.45	$ 3,360.93
366.	Saunders, Fred	1	$ 1,991.66	$ 248.96
367.	Schade, Frank	.25	$ 497.92	$ 62.24
368.	Schlueter, Dale	8	$ 15,933.30	$ 1,991.66
369.	Scholz, David	1	$ 1,991.66	$ 248.96
370.	Scott, Charlie	2.50	$ 4,979.16	$ 622.39
371.	Scott, John Raymond	11	21,908.29	$ 2,738.54
372.	Seals, Bruce	.50	$ 995.83	$ 124.48
373.	Searcy, Ed	.25	$ 497.92	$ 62.24

	Class Member	Units	Total Shares	Annual Installment
374.	Short, Eugene	.50	$ 995.83	$ 124.48
375.	Shumate, John	.50	$ 995.83	$ 124.48
376.	Sibert, Sam	.25	$ 497.92	$ 62.24
377.	Sibley, Mark	.50	$ 995.83	$ 124.48
378.	Silas, Paul	15	$29,874.93	$3,734.36
379.	Siegfried, Larry	13	$25,891.62	$3,236.45
380.	Silliman, Mike	1	$ 1,991.66	$ 248.96
381.	Skinner, Alvin	1	$ 1,991.66	$ 248.96
382.	Sloan, Jerry	15	$29,874.94	$3,734.36
383.	Smith, Adrian	12	$23,899.95	$2,987.50
384.	Smith, Bill	1.50	$ 2,987.49	$ 373.44
385.	Smith, Don	.50	$ 995.83	$ 124.48
386.	Smith, Elmore	3	$ 5,974.99	$ 746.87
387.	Smith, Garfield	2	$ 3,983.33	$ 497.92
388.	Smith, Greg	7.75	$15,435.39	$1,929.42
389.	Smith, Phil	1	$ 1,991.66	$ 248.96
390.	Smith, Randy	3	$ 5,974.99	$ 746.87
391.	Smith, Robert "Bingo"	6	$11,949.98	$1,493.75
392.	Snyder, Richard	15	$29,874.94	$3,734.36
393.	Sobers, Rick	.50	$ 995.83	$ 124.48
394.	Sojourner, Michael	1	$ 1,991.66	$ 248.96
395.	Sorenson, Dave	2.50	$ 4,979.16	$ 622.39
396.	Stacom, Kevin	1	$ 1,991.66	$ 248.96
397.	Stallworth, Bud	2	$ 3,983.33	$ 497.92

	Class Member	Units	Total Shares	Annual Installment
398.	Stallworth, Dave	9.25	$18,422.88	$2,302.86
399.	Steele, Larry	3	$ 5,974.99	$ 746.87
400.	Stewart, Dennis	.50	$ 995.83	$ 124.48
401.	Stovall, Paul	.50	$ 995.83	$ 124.48
402.	Stricker, Bill	.50	$ 995.83	$ 124.48
403.	Suiter, Gary	1	$ 1,991.66	$ 248.96
404.	Taylor, Fred	2	$ 3,983.33	$ 497.92
405.	Terry, Chuck	.75	$ 1,493.75	$ 186.72
406.	Thigpen, Justus	.50	$ 995.83	$ 124.48
407.	Thomas, Joe	1	$ 1,991.66	$ 248.96
408.	Thomas, Terry	.50	$ 995.83	$ 124.48
409.	Thompson, George	.50	$ 995.83	$ 124.48
410.	Thorn, Rod	12	$23,899.95	$2,987.49
411.	Thurmond, Nate	15	$29,874.94	$3,734.36
412.	Tolson, Dean	.50	$ 995.83	$ 124.48
413.	Tomjanovich, Rudy	4	$ 7,966.65	$ 995.83
414.	Tormohlen, Gene	8	$15,933.30	$1,991.66
415.	Trapp, George	3	$ 5,974.99	$ 746.87
416.	Trapp, John	6.50	$12,945.81	$1,618.23
417.	Tresvant, John	13.50	$26,887.45	$3,360.93
418.	Tschogl, John	1.25	$ 2,489.58	$ 311.20
419.	Tucker, Albert	8	$15,933.30	$1,991.66
420.	Turner, William	9	$17,924.97	$2,240.62
421.	Unseld, Westley	8	$15,933.30	$1,991.66

	Class Member	Units	Total Shares	Annual Installment
422.	Vallely, John	2	$ 3,983.33	$ 497.92
423.	Van Arsdale, Richard	15	$29,874.94	$3,734.36
424.	Van Arsdale, Thomas	15	$29,874.94	$3,734.36
425.	Van Lier, Norm	6	$11,949.98	$1,493.75
426.	Verga, Bob	.50	$ 995.83	$ 124.48
427.	Walk, Neal	6	$11,949.98	$1,493.75
428.	Walker, Chester	14.50	$28,879.11	$3,609.88
429.	Walker, Clarence "Foots"	1	$ 1,991.66	$ 248.96
430.	Walker, Jimmy	11	$21,908.29	$2,738.53
431.	Walton, Bill	1	$ 1,991.66	$ 248.96
432.	Warbington, Perry	.25	$ 497.92	$ 62.24
433.	Warner, Cornell	4	$ 7,966.65	$ 995.83
434.	Warren, John	5	$ 9,958.31	$1,244.78
435.	Washington, Bobby	2	$ 3,983.33	$ 497.92
436.	Washington, James	14.75	$29,377.03	$3,672.12
437.	Washington, Kermit	1.50	$ 2,987.49	$ 373.44
438.	Washington, Stan	.25	$ 497.92	$ 62.24
439.	Watts, Don	1.50	$ 2,987.49	$ 373.44
440.	Weatherspoon, Nick	1.50	$ 2,987.49	$ 373.44
441.	Webb, Jeff	2	$ 3,983.33	$ 497.92
442.	Wedman, Scott	1	$ 1,991.66	$ 248.96
443.	Weiss, Robert	15	$29,874.94	$3,734.37
444.	Wells, Owen	.25	$ 497.92	$ 62.24
445.	Wesley, Walter	14.75	$29,377.03	$3,672.12

	Class Member	Units	Total Shares	Annual Installment
446.	West, Jerry	14	$27,883.28	$3,485.40
447.	Westphall, Paul	2	$ 3,983.33	$ 497.92
448.	Wetzel, John	7	$13,941.64	$1,742.70
449.	White, Herb	1	$ 1,991.66	$ 248.96
450.	White, Jo Jo	6	$11,949.98	$1,493.75
451.	White, Rudy	.50	$ 995.83	$ 124.48
452.	Wicks, Sidney	3	$ 5,974.99	$ 746.87
453.	Wilkens, Len	14.50	$28,879.11	$3,609.88
454.	Wilkes, Jamaal (Keith)	1	$ 1,991.66	$ 248.96
455.	Williams, Art	10	$19,916.63	$2,489.58
456.	Williams, Bernie	3	$ 5,974.99	$ 746.87
457.	Williams, Earl	1	$ 1,991.66	$ 248.96
458.	Williams, Gus	.50	$ 995.83	$ 124.48
459.	Williams, Milt	1.50	$ 2,987.49	$ 373.44
460.	Williams, Nate	3	$ 5,974.99	$ 746.87
461.	Williams, Ron	7.75	$15,435.39	$1,929.42
462.	Williams, Sam	3	$ 5,974.99	$ 746.87
463.	Williams, Willie	1	$ 1,991.66	$ 248.96
464.	Willoughby, Bill	.50	$ 995.83	$ 124.48
465.	Wilson, Bob	1	$ 1,991.66	$ 248.96
466.	Wilson, George	12	$23,899.95	$2,987.49
467.	Wilson, Isaiah "Bunny"	1	$ 1,991.66	$ 248.96
468.	Winfield, Lee	6	$11,949.98	$1,493.75
469.	Wingo, Harthorne	1.75	$ 3,485.41	$ 435.68

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	Class Member	Units	Total Shares	Annual Installment
470.	Winkler, Marvin	.50	$ 995.83	$ 124.48
471.	Winters, Brian	1	$ 1,991.66	$ 248.96
472.	Witte, Luke	1.50	$ 2,987.49	$ 373.44
473.	Wohl, Dave	3	$ 5,974.99	$ 746.87
474.	Workman, Tom	6	$11,949.98	$1,493.75
475.	Wright, Joby	.50	$ 995.83	$ 124.48
476.	Yates, Barry	1	$ 1,991.66	$ 248.96
477.	Yelverton, Charlie	1	$ 1,991.66	$ 248.96
478.	Zeller, Gary	2	$ 3,983.33	$ 497.92
479.	Zopf, Bill	1	$ 1,991.66	$ 248.96

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., Plaintiffs, -against- NATIONAL BASKETBALL ASSOCIATION, et al., Defendants.	70 Civ. 1526 (RLC)

APPLICATION OF COUNSEL FOR PLAINTIFFS AND CLASS MEMBERS FOR AWARD OF ATTORNEYS' FEES, COSTS AND DISBURSEMENTS

Petitioner is Weil, Gotshal & Manges, 767 Fifth Avenue, New York, New York 10022, counsel of record for the plaintiffs and class members in this action. Petitioner respectfully submits this Application for Attorneys' Fees, Costs and Disbursements, and in support thereof files the annexed affidavit of Peter Gruenberger, Esq.

Attorneys' fees are sought by this Application as reasonable compensation for work performed on behalf of all class members from the inception of this action through April 15, 1976, plus fees incurred from and after April 16, 1976 to the date of final approval of the settlement as follows:

1. Attorneys' fees of Petitioner in the amount of $788,951.31, which amount is based upon and is limited to Petitioner's standard hourly billing rates, without any premium for services performed for plaintiffs and the class from 1970 through April 15, 1976.

2. Attorneys' fees in the amount of $41,021.77 of the firm of Clifford, Warnke, Glass, McIlwain & Finney, 815 Connecticut Avenue, N.W., Washington, D.C. 20006, which firm, together with Petitioner represented the interests of plaintiffs and the class before the Senate Subcommittee on Antitrust and Monopoly of the Committee of the Judiciary in 1971 and 1972 relating to the efforts of the National Basketball and American Basketball Associations to obtain legislation exempting their proposed merger from the antitrust laws. Such amount was actually paid to that firm on behalf of the class members.

3. Attorneys' fees of Petitioner at its standard hourly billing rates, without premium, for services performed for plaintiffs and the class in this action between April 16, 1976 and final approval of the settlement, including appeals, if any, or the expiration of the time to appeal.

Petitioner also respectfully submits this Application for costs and disbursements, which involve two components, as follows:

1. Costs and disbursements actually incurred and expended for and on behalf of the plaintiffs and the class from the date of inception of this action through March 31, 1976 in the amount of $122,701.05.

2. Such further actual costs and disbursements expended from and after April 1, 1976 until final approval of the settlement.

All such fees, costs and disbursements are to be paid by the Settling Defendants, without any reduction of the Settlement Fund created for the benefit of the class members.

As grounds for this Application, Petitioner relies upon all the proceedings heretofore had in this action and the annexed affidavit of Peter Gruenberger.

Dated: New York, New York
April , 1976

WEIL, GOTSHAL & MANGES

By _____
(A Member of the Firm)
Attorneys for Plaintiffs
767 Fifth Avenue
New York, New York 10022
(212) 758-7800

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., Plaintiffs, -against- NATIONAL BASKETBALL ASSOCIATION, et al., Defendants.	70 Civ. 1526 (RLC) AFFIDAVIT IN SUPPORT OF APPLICATION FOR ATTORNEYS' FEES, COSTS AND DISBURSEMENTS

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

PETER GRUENBERGER, being duly sworn, deposes and says:

1. I am a member of the bar of this Court and of the firm of Weil, Gotshal & Manges, the Petitioner on this Application. Petitioner has been sole counsel of record for plaintiffs, representing the entire class, from before the inception of this action in April 1970 to the present. As indicated more fully below, Petitioner, before this Court and the Congress, has protected and advanced the interests of all class members in eliminating restraints on their ability to negotiate contracts for their services and in obtaining compensation for their losses suffered as a direct result of those restraints. I submit this affidavit in support of Petitioner's Application (annexed hereto) for an award of reasonable attorneys' fees plus reimbursement for costs and disbursements as set forth below and in the Stipulation and Settlement Agreement dated April , 1976.

2. As any participant in this action (including the Court and our formidable and able adversaries) will attest, this class action and its settlement has involved anything but a normal, run of the mill case. This has not been a class action (a) in which the class determination was hardly, if at all, seriously touched upon, or (b) where the merits have not been severely tested, or (c) where little or no significant discovery of any kind has been undertaken, or (d) where the settlement is a cut and dried exchange of a release in exchange for a settlement payment which provides a miniscule recovery for each class member, or (e) where counsel for the class has sought a fee award involving a substantial premium further reducing the benefits to the class.

3. Rather, every issue in this action has been hard fought at every turn; the merits have been tested severely; intensive discovery of every kind has been engaged in; and the benefits from the prosecution and settlement of this action have already been and will continue to be vast and extremely beneficial to each class member. Substantial benefits have been accruing since 1970 during the prosecution of the action and the settlement itself involves not only a significant fund for the class but also drastic changes in the practices which were the subject of this action. Moreover, Petitioner seeks no premium fee for the 13,546 hours expended to date on this case, but simply its normal hourly charges based on its time records, so that the class will receive the maximum monetary recovery from the Settlement Fund. Set forth below is the relevant history of this litigation, including details of: the benefits that have accrued to plaintiffs and the class which greatly transcend the Settlement Fund itself; Petitioner's efforts in the prosecution and

settlement of the issues raised in this action which brought about those benefits; and Petitioner's request for an award of attorneys' fees and reimbursement of costs. Many of the facts recited below appear in this Court's opinion dated February 14, 1975 (389 F. Supp. 867) and in numerous other opinions of and transcripts of hearings before this Court.

I

HISTORY OF THE LITIGATION

A. Commencement and the Nature of the Litigation

4. This action was commenced on April 16, 1970 in this Court as a class action on behalf of all then present National Basketball Association ("NBA") players and all other persons who would become NBA players prior to the date of the final judgment. The defendants initially were the NBA and the 14 teams which at that time comprised the NBA (the "NBA defendants") as well as the American Basketball Association ("ABA").

5. The Complaint alleged violations by the NBA defendants of Sections 1 and 2 of the Sherman Act and had two main features: (a) a challenge, seeking preliminary injunctive relief, to the then proposed merger or consolidation of the NBA and the ABA or their member teams, which would have eliminated all inter-league competition for players' services; and (b) a challenge, seeking injunctive relief and trebled damages, to existing player allocation and retention practices in the NBA (including the college draft, reserve clause, and player lists), which had always prevented intra-league competition

for players' services in the NBA. Later amendments to the Complaint added practices subsequently imposed during the course of the action by the NBA defendants (such as the reserve compensation rule, akin to football's Rozelle Rule), or which were revealed in pre-trial discovery. Such amendments also added all new NBA teams as they joined the NBA, resulting in the naming of all of the present 18 NBA teams as defendants.

6. This action was the first challenge in any professional sport to the entire system of player allocation inherent in the practices of professional sports leagues, and was the first class action ever filed seeking to eliminate restrictions upon competition for players' services. It further was the first suit filed to enjoin the merger of competing sports leagues, despite the fact that four years earlier the National and American Football Leagues had merged, thereby eliminating all inter-league competition in professional football without providing any protection for the players.

7. Other than the early historic rulings that baseball was not subject to the antitrust laws, and later rulings that other sports were so subject, no judicial precedent of any kind existed as to the merits of antitrust claims in professional sports generally, and basketball in particular. No criminal or civil proceeding by the Justice Department, the Federal Trade Commission or any private party relating to any of the issues raised herein had preceded this action. And, Congress in 1966 had readily exempted the football merger from the ambit of the antitrust laws.

B. Prosecution of the Action

Relief Enjoining Merger of the NBA and ABA

8. Contemporaneous with the filing of this action, Petitioner sought on behalf of the class a temporary restraining order prohibiting any merger or consolidation of the NBA and ABA or any of their member teams and the effectuation of any non-competition agreement between the two leagues. Petitioner filed extensive briefs and affidavits in support of the motion and on April 17, 1970, after a hearing at which Petitioner argued on behalf of the class in favor of the motion, Judge MacMahon issued such a temporary restraining order.

9. On May 4, 1970, after Petitioner had filed further briefs and affidavits and after another hearing at which Petitioner argued, Judge Tenney issued a broad preliminary injunction forbidding any merger and non-competition agreement between the competing leagues (though recognizing the right of the defendants to seek an exemption from the antitrust laws for any such merger in Congress). The effect of Petitioner's effort before Judges MacMahon and Tenney are clear. First, inter-league competition for player services was maintained, thus preventing players' salaries from sliding back to pre-ABA levels (as had occured in professional football following the merger in 1966 of the two competing leagues) and, further, increasing salaries in the NBA as the ABA teams gradually became even more competitive in the market for player services. The NBA median salary has increased from some $35,000 in 1970 when the injunction was obtained to $100,000 today -- due except for inflation entirely to the injunction so obtained. Second, the need for a suit to "undo" an already-accomplished merger was eliminated -- relief which as a practical matter might

have been impossible to obtain. Third, the owners of the ABA and NBA teams were required to seek Congressional permission to merge following a preliminary ruling by the Courts that such a merger, absent special legislation (or absent protection of player rights) was per se illegal under the antitrust laws.

Congressional Hearings

10. Following the entry by the NBA and ABA into a Merger Agreement in May 1971, hearings over a two-year period were held by the Senate Subcommittee on Antitrust and Monopoly of the Committee of the Judiciary on the NBA and ABA owners' proposal for an exemption from the antitrust laws for the proposed merger. The players and counsel, including Petitioner, opposed such legislation, and as a result of their opposition, the Senate Committee unanimously refused to allow a merger, except on terms which would have modified or eliminated many of the NBA's intra-league practices which were being challenged in this action. Petitioner with Lawrence Fleisher, Esq. and Washington counsel(Clifford, Warnke, Glass, McIlwain & Finney)played a key role in this successful opposition to the merger. The NBA and ABA had gone before this Committee with a proposed merger bill which had received virtually unanimous endorsement from members of the Senate. In light of the professional football merger experience in 1966, legislative observers expected the Committee to report this bill quickly and without significant change. Nevertheless, counsel and the players refused to concede the merger issue and were instrumental in organizing and presenting the

players' case against merger to that Committee. Inter alia, counsel prepared statements by witnesses, testified themselves at length in those hearings, prepared exhibits, and in general helped compile a record that covers two large hearing volumes. So effectively was this case made for the players that the Committee's original position literally was turned around: instead of reporting out the NBA merger bill, the Committee unanimously reported out a bill protecting players' rights against the intra-league practices of the NBA challenged in this action as a condition to any merger. The NBA refused to support such conditions. As a result, no exempting legislation for the merger was adopted. The substantial economic benefits which have accrued to the players from the successful effort to maintain separate leagues competing for players' services are manifest, as discussed herein. The players have opposed merger so long as their rights were not protected. The settlement, described below, protects those rights.

Non-Communication Order

11. Petitioner's successful efforts to maintain competition which would have been eliminated by a merger during the 1970-1972 period were not limited to Congress. Petitioner further protected the class' interests in this Court on the very eve of those 1971 Congressional hearings. At that time, Petitioner learned that the NBA was attempting to obtain individual player support for the merger in what we considered an unfair manner. Despite the NBA's opposition, and the fact that class certification had not yet been granted, Petitioner obtained on behalf of the class an order from Judge Tenney precluding

the NBA defendants from discussing with any player the issues (including merger) which had been raised in this suit for an indefinite period, and at Petitioner's urging, severely limiting those defendants' communications with players, except in the ordinary course of business. As a result of this continuing relief (which the NBA unsuccessfully sought to terminate as recently as its January 2, 1976 motion (discussed in ¶18(e), infra)), the class has been able to maintain a high degree of cohesiveness so essential in this case which has extended over a six-year period. Thus, for example, nearly 80 present and former players (including five coaches) have been subjected to depositions fully probing their views of the case. In a situation such as exists in professional basketball, where such class members are in day-to-day contact with (and thus susceptible to constant pressure to capitulate to) their defendant-employers, obtaining and maintaining such non-communication order was imperative.

Contempt Motion

12. In the Spring of 1972, it appeared that the NBA and ABA had reached an agreement, reflected in an NBA Board of Governors resolution, not to sign players previously under contract with each other's teams, in an effort to eliminate or minimize competition for veteran players which appeared to be developing at that time. Petitioner immediately moved to have the defendants held in contempt of Judge Tenney's preliminary injunction which precluded the defendants from agreeing not to compete for players' services. Defendants opposed the motion, resulting in extensive affidavits and briefs

filed by Petitioner and another hearing before Judge Tenney. Although the Court did not hold defendants in contempt, Judge Tenney's opinion expressly adopted Petitioner's view that the NBA's resolution had the potential to be applied in a non- or anti-competitive manner, and he specifically warned the defendants that he would carefully examine any future charge or evidence of such a refusal to compete. The therapeutic value of Judge Tenney's warning is revealed by the competition for players between the two leagues subsequent to the issuance of that opinion, with the resulting economic benefits to players. Indeed, the NBA defendants themselves have on several occasions relied on that opinion, most recently to defend successfully charges by the ABA Players Association in another case relating to the NBA's proposed special draft of players under contract to ABA teams.

13. In July 1973, following Petitioner's successful efforts to block Congressional approval of the merger on the owners' terms, and following assignment of this action to Judge Carter, the ABA sought to amend Judge Tenney's preliminary injunction order so as to allow the NBA and ABA the unqualified right to discuss and effect a merger without such Congressional approval. Petitioner successfully opposed this effort too because it failed to safeguard the rights of the class. Ultimately, after a hearing before this Court, the Court issued a modified order which would allow NBA-ABA talks, but which carefully protected the interests of the class members, as follows: any NBA-ABA agreement to merge had to deal with and set forth the disposition of challenged NBA intra-league practices; counsel representing the class had to be present at any meeting at which

these subjects or others dealing with players' rights were discussed; and any agreement regarding a merger was not to be final until approved by this Court. This order has remained intact despite later attack, discussed below in ¶16, by defendants.

Class Action Determination

14. Achieving class action status was an important goal, since a single vehicle for obtaining injunctive relief against practices affecting every active player in the same manner was essential; and recovery by all class members of damages since the 1966-1967 season was unlikely, if possible at all, without a class suit. Unlike many, if not most, class actions in which the class certification issue is virtually conceded (usually contemporaneously with a settlement), the class issue here was hotly contested. The NBA defendants at every opportunity consistently and strenuously argued against certification of this suit as a class action, and instead sought to have the case held to be one brought on behalf of the named plaintiffs only or by the National Basketball Players Association (the "Players Association"). In the Spring of 1974, Petitioner moved for class certification and the NBA defendants launched a frontal attack on the class action allegations. Extensive briefs and affidavits were submitted by Petitioner on this matter, since denial of class status would have effectively precluded vindication of the rights of almost 500 players, both active and retired; would have severely damaged the opportunity to change the NBA's practices at one time in a uniform manner; and (as experience has shown in other cases) would have minimized or eliminated the possible monetary recovery by the class. The NBA defendants raised

every conceivable argument in opposition to the class certification and required Petitioner not only to substantiate the threshold requirements of Rule 23 of the Federal Rules of Civil Procedure, but also to rebut major questions regarding alleged conflicting interests among every conceivable group of players within the class.* Petitioner not only had to meet these issues, but further had to do so without the benefit of any prior sports or similar case in which a class action certification had been granted. Ultimately, however, but only following a lengthy hearing at which all the issues were aired, Petitioner was successful in obtaining certification of this class. As a result of Petitioner's effort to obtain this certification, 479 class members will be able to share, at no cost to them, in the substantial benefits described in Part II below. Such benefits accrue not only to the class, but also to all future NBA players in the form of elimination and significant modification of the challenged NBA intra-league practices.

ABA Cross-Claims and Counterclaims

15. In July 1974, the ABA and its teams filed "cross-claims" and "counterclaims" seeking an injunction and trebled damages against, inter alia, the named plaintiffs, the Players Association and Lawrence Fleisher, alleging that they violated both the National Labor Relations Act and the antitrust laws. Petitioner immediately acted to protect the class from this onslaught by moving for summary judgment dismissing such claims. After a hearing before this Court, for which Petitioner filed several affidavits and a memorandum of

* In addition, the NBA defendants sought to challenge Petitioner's right to represent the class -- a contention which the Court directly rejected in its opinion certifying the class by citing with approval Petitioner's efforts on behalf of the class. (389 F. Supp. 867,900 and n. 69)

law as to the host of issues raised, the ABA was forced to withdraw all of its charges.

Defendants' Motion for
Summary Judgment and Dismissal

16. Also in July 1974, by way of motions for summary judgment and dismissal, the NBA defendants and the ABA sought to attack the Complaint on the merits and to dissolve the previously issued preliminary injunction. Largely on the basis of labor law principles, they contended, inter alia, that the NLRB had exclusive or primary jurisdiction to hear the class claims; that the class did not have standing to sue; that the dispute involved mandatory subjects of collective bargaining; that the defendants' practices were protected from challenge by virtue of the so-called "labor exemption" from the antitrust laws; and that the Players Association was an indispensable party. Despite the vigorously-pressed arguments of both the NBA defendants and the ABA, which filed separate papers, and without the benefit of any direct precedent to support the players' opposition, Petitioner prevailed as to all of these novel and difficult questions. Petitioner's efforts involved the filing of voluminous briefs and affidavits and participating in another critical oral argument, which resulted in the Court's landmark opinion of February 14, 1975 upholding the class' federal antitrust claims in the face of defendants' omnibus attack. The Court's discussion of the merits of the antitrust claims, which Petitioner pressed in its papers and at the hearing, provided the NBA defendants with notice of the difficulty of their case and thus, the opinion provided a key impetus for ultimately reaching the settlement of this action. However, at the same time, it left open issues of fact, particularly in the collective bargaining area, which set the stage for the vast discovery program described below.

Pre-Trial Discovery

17. In addition to the extensive litigation on the merits, Petitioner also engaged in an extraordinarily broad program of discovery which, of necessity, was compressed into a period of a few months. Following the Court's opinion of February 1975, the Court in March ordered commencement of discovery by all parties -- the plaintiffs against the NBA defendants and the ABA, the NBA against plaintiffs and the ABA and NBA against each other.* More discovery took place in this case between April 1975 and January 31, 1976, than in most every other case (regardless of the duration of such other discovery) in the experience of the lawyer participants.

(a) Interrogatories -- Petitioner propounded 74 multipart interrogatories (containing hundreds of questions) to the NBA and each of its member teams in March 1975. Significantly, these interrogatories not only required the NBA and its teams to detail the history and operations of their practices relating to players, but also pinned down the NBA's theories and contentions concerning the need for the challenged practices and the facts concerning the alleged collective bargaining defense. In addition, Petitioner prepared responses to the two sets of interrogatories (32 multipart interrogatories) addressed by the NBA defendants to each of the fourteen named plaintiffs and the Players Association. (As indicated in ¶18(a) infra, Petitioner succeeded in overcoming the NBA defendants' numerous objections to plaintiffs' interrogatories, while many of our objections to defendants' interrogatories and answers were upheld by the Court.) Many hours were spent in this area of

* In February 1974, the ABA was required to assert all of its claims against the NBA defendants in the Robertson case, rather than in the Northern District of California, so that all antitrust issues involving professional basketball could be heard in one forum at the same time.

discovery resulting in crucial admissions by defendants as well as the discovery of the location and description of defendants' documents.

(b) Documents

(i) Document production, in terms of the sheer number of documents involved and the logistics of production, was extensive to say the least. Petitioner first reviewed many thousands of documents in the files of the Players Association to determine which documents were called for by the NBA's broad document demand, which documents were privileged, etc. and later arranged for production of the documents located in those files. Further, throughout the subsequent months of discovery, Petitioner reviewed and arranged for production of the continually generated Players Association documents. Petitioner also arranged for review and production in New York of responsive, non-privileged documents in the possession of each of the fourteen named plaintiffs as well as documents in the files of their present and former attorneys and representatives. Later, Petitioner managed the extraordinary task of collecting, reviewing and producing all of the thousands of documents in the possession of more than 70 additional class members who were scattered all over the country (and many of whom were travelling with their teams at the time) and their present and former attorneys and representatives who were also located in all parts of the country. Hundreds of hours were spent in an effort to properly comply with these discovery obligations.

(ii) In addition, Petitioner reviewed hundreds of thousands of documents produced pursuant to our demand from the files of the NBA, its attorneys, its member teams, the ABA and its teams and attorneys, and third party witnesses. In many instances, this review did not take place in New York City. Considerable amounts of time were spent reviewing files located across the country in many cities (such as Los Angeles, San Francisco and Indianapolis) often, of necessity, the night before a deposition was to be taken. And, the review was not limited merely to correspondence, records and newspapers: Petitioner won access to and reviewed thousands of pages of financial data, as well as depositions and record files from collateral lawsuits in which the NBA, ABA and their teams were parties.

(c) Depositions

The incredible amount of work involved in the discovery described above was multiplied in difficulty and time by the fact that a deposition program of vast proportions was simultaneously being conducted. The problems overcome by Petitioner in conducting just that deposition program could be the basis for a textbook on discovery.

In an effort to obtain the most complete record for attacking the restraints at issue and defending against the attacks by the NBA defendants, Petitioner took, defended and participated in depositions of over 125 people, covering over 200 deposition days, in no less than 20 different cities in the United States and Canada between April 1, 1975 and January 31, 1976.

(i) Depositions of NBA and ABA Representatives - Petitioner took and participated in the taking of over 40 depositions of defendant parties and their representatives across the United States. These included many representatives of NBA teams, officials of the NBA league office (former NBA Commissioner Walter Kennedy and Deputy Commissioner Simon Gourdine were deposed by Petitioner for a total of eight days) and five of the attorneys for the NBA who had participated in collective bargaining; Petitioner also participated in the many depositions of NBA representatives taken by counsel for the ABA. Petitioner further participated in the depositions taken of present and former ABA league and team representatives in an effort to discover facts, and the ABA's contentions, concerning the challenged practices. Further, since many of the above-depositions could not be held in New York, Petitioner had to take numerous "road trips" often lasting a week and more in order to take all of these depositions. Preparing for and taking all of these depositions naturally involved considerable time, effort and expense.

(ii) Player Depositions - Petitioner, of course, did not merely take depositions. During the early stages of this discovery, Petitioner defended all 14 named plaintiffs at depositions taken by the NBA defendants. In addition, the NBA defendants took and Petitioner defended the depositions of approximately 70 class members during the basketball season. Petitioner was forced to spend innumerable hours trying to locate retired players and attempting to schedule their depositions and those of active players (and production of all their

documents) for the time and place most convenient to the class member, consistent with the needs of the Court and all counsel. As a result, Petitioner travelled to many locations scattered throughout the country, staying on the road for as long as sixteen consecutive days, and spending hundreds of hours defending the class members at their depositions.

(iii) Depositions of Third Party Witnesses - The NBA defendants also took the depositions of many third party witnesses, including individual players' agents and attorneys, as well as representatives of players associations in baseball, football and hockey. Petitioner attended each of these depositions (at locations ranging from San Francisco to Toronto), reviewed documents produced by the deponents and conducted cross-examination. In addition, defendants took and Petitioner defended the deposition of Lawrence Fleisher for over 12 days -- plumbing the depths of his knowledge of every conceivable fact concerning the issues from 1963 to date.

Discovery Motions

18. Not surprisingly, this extraordinarily broad and intensive discovery in a case which defendants fought at each step of the way spawned innumerable disputes concerning the rights and obligations of the various parties and their counsel. As a result, Petitioner frequently had to submit extensive briefs and affidavits and appear for hearings before this Court in an effort to force the NBA defendants to meet their discovery obligations and to clarify the discovery obligations of plaintiffs and the class. For example:

(a) In May and June 1975 Petitioner moved to compel defendants to comply with Petitioner's discovery demands, and further, opposed a motion by the NBA defendants to compel compliance with their discovery demands directed toward both named plaintiffs and every member of the class. Petitioner submitted memoranda and affidavits exceeding 180 pages in length in connection with these motions and further participated in the lengthy hearings thereon. Petitioner's Rule 37 motions were resolved by the NBA defendants providing more satisfactory responses to plaintiffs' interrogatories and demands for documents. In addition, Petitioner successfully resisted most of the NBA defendants' charges and demands concerning discovery from named plaintiffs and the Players Association, including attempts to discover financial data. Finally, discovery from the class was sharply restricted as a result of Petitioner's objections to wholesale discovery of the class. In July the Court limited the NBA to 75 class member depositions; limited the permissible scope of questioning at those depositions; and adopted Petitioner's contention that class members who could not comply with discovery would not be subject to Rule 37 sanctions.

(b) In September 1975, faced with the prospect of 75 more player depositions and a dozen or more third-party witnesses' depositions at locations throughout the country, Petitioner moved pursuant to Federal Rule 26 and Local Civil Rule 5(a) for prepayment by defendants of plaintiffs' cost and attorneys' fees to be incurred in connection with many of these depositions. Oral argument on this motion was held on November 3, 1975. As a result of this motion and despite the strong opposition of the NBA, the Court allowed such fees and costs for certain

of the non-player depositions; in addition, the NBA agreed to conduct many of the depositions in New York at a time when the player-deponent's team came here to play, thereby resulting in a substantial benefit to the class in terms of convenience and monetary savings.

(c) On November 6, 1975, Petitioner participated in yet another hearing before this Court, at which time the Court redefined the proper scope of the requirements for compliance with defendants' discovery demands directed toward the individual class members who were to be deposed.

(d) At still another hearing before this Court in early December 1975, the NBA defendants attempted to assert that plaintiffs and class members had failed to comply with a host of defendants' discovery demands. Petitioner successfully opposed such ad hoc arguments and the Court required the NBA defendants to make a formal motion setting forth their specific complaints and allegations.

(e) In response to the Court's direction, on January 2, 1976, the NBA filed an omnibus Rule 37 motion, attacking plaintiffs', class members' and Petitioner's allegedly inadequate compliance with the defendants' discovery demands. The scope of the charges ranged from the alleged inexcusable failure of individual players to produce documents to Petitioner's alleged improper directions to players not to answer questions posed by the NBA at depositions. The NBA also sought to eliminate Judge Tenney's earlier non-communication order. Petitioner had only a few days available in which to respond and for yet another time -- not the first or last -- worked around the clock. Petitioner reviewed the

transcripts of every player deposition, reconfirmed information previously supplied by nearly every class member and named plaintiff who had been subjected to discovery, and answered each of the NBA's allegations both in a 71 page affidavit (to which were annexed 33 multipart exhibits) and by oral argument at a hearing before the Court which lasted the entire day of January [illegible]. At that hearing, the Court first found that Petitioner and the class had done all that could be asked in complying with the herculean task of deposition and document discovery which they had faced. The Court next held, over the persistent and vigorous argument of the NBA's counsel, that Petitioner had been entirely correct in every one of its objections and directions to plaintiffs and class members not to answer hundreds of improper individual questions, and in some cases entire areas of questioning at their depositions. Finally, the Court did not eliminate or modify the non-communication order.

(f) It further must be noted that at every opportunity the NBA defendants sought to have the discovery schedule extended to permit depositions and document production to take place at less breakneck speed and to postpone the trial date which the Court had set for June 1, 1976. Petitioner successfully opposed all such efforts -- despite the severe strain which the extensive document discovery combined with months of two-to-four depositions per day placed on the attorneys involved -- because of our desire to meet the scheduled June 1, 1976 trial date at all costs and to preclude any delay which might forestall the relief which the class might obtain.

* At that hearing, the Court specifically commended Petitioner for the caliber of its work in responding to this motion. Transcript of Hearing of January 8, 1976, p. 49.

Amendment of the Complaint

19. Petitioner continued its effort to advance the class' interests as fully and as carefully as possible by undertaking the time-consuming and painstaking task of amending the Complaint for a second time in October 1975, to include newly discovered or recently imposed restraints and again to name new and successor NBA teams as defendants, and to make other changes therein. In April 1974, Petitioner had first amended the original complaint, inter alia, to add new NBA teams as parties and to redefine the class action allegations. While numerous discussions were had with counsel for the NBA defendants in an effort to accomplish this second amendment by agreement and stipulation, NBA counsel refused to enter into any such stipulations. Petitioner consequently filed a motion to amend the complaint which was strenuously opposed by the NBA defendants in answering papers and at a hearing before this Court; but Petitioner was successful and the Court permitted the amendment.

Related Proceedings

20. In July 1975, the NBA sought to accomplish an end-run around the Court's preliminary rejection of its collective bargaining defense. At that time, the NBA proposed as subjects for collective bargaining the very intra-league practices which were attacked in the Complaint. When the Players Association refused to bargain about any of these matters on the ground that these were issues for the Court to decide, the NBA filed an unfair labor practice charge with the National Labor Relations Board, alleging a refusal to negotiate about mandatory subjects of collective bargaining. Seeking to keep intact the Court's jurisdiction, Petitioner immediately prepared an affidavit and filed extensive memoranda of law in opposition to the charge with the NLRB. To date, the NLRB has not issued a complaint or ordered the Players Association to bargain about these issues. Petitioner thus

avoided the prejudice to the class which might have resulted from an NLRB order directing collective bargaining about the very intra-league practices at issue before the Court and declaring them to be mandatory subjects of collective bargaining.

21. Petitioner further has participated successfully in various other proceedings related to Robertson v. NBA in an effort to protect the class' interests and to preclude even the slightest harm or prejudice thereto. Among these were the ABA Players Association's unsuccessful attempt to intervene in and delay this case in December 1975, and various motions heard in the companion case thereafter brought by the ABA Players Association.

C. Settlement Discussions

22. At various times between 1971 and 1975 settlement discussions were held. These discussions with NBA representatives proved fruitless, despite substantial time and effort expended in that effort, due to defendants' refusal to make meaningful settlement offers.

23. However, in January and February 1976 settlement discussions again were undertaken. Petitioner, along with Lawrence Fleisher and several named plaintiffs and class members, met with representatives of the NBA defendants in New York and in Philadelphia. After days of intensive around the clock negotiations, an agreement in principle was reached in early February. In these negotiations, discussion focused on two major areas: elimination and modification of the challenged NBA practices and a settlement fund to be paid to the class. In order to achieve the largest amount of direct monetary benefit for the class from the NBA defendants, Petitioner agreed to limit its application

for attorneys' fees to its normal hourly charges and not to seek, even though appropriate under the applicable cases, fees in excess of such charges. The broad concepts of the proposed settlement were explained to this Court shortly thereafter in February.

24. The settlement drafting process was far from complete, however. This settlement involved much more than dismissing a lawsuit in exchange for the payment of dollars in settlement. The heart of the NBA's player acquisition and retention practices was being eliminated or changed, and such changes had to be clearly spelled out in the Settlement Agreement and related Exhibits. Hence, over the next ten weeks, scores of drafting and negotiation meetings often lasting all day (and as late as 4:30 a.m.) were held between Petitioner and counsel for the NBA, at times together with the NBA's negotiating committee and Lawrence Fleisher. The interests of the class were fully protected during this period; indeed, on more than one occasion, it appeared that the trial would have to be held after all, when class rights were threatened to be adversely affected. It was not until April 29, after hundreds of hours of negotiating and drafting the Settlement Agreement and related Exhibits, that the outstanding issues finally were resolved in writing.

II

BENEFITS OBTAINED FOR THE CLASS

25. As a result of Petitioner's efforts, the plaintiffs and class members realized significant benefits during the pendency of this action even before obtaining the substantial benefits provided by the Settlement Agreement.

(a) The initial benefit to the class from this suit resulted from Petitioner's successful efforts to maintain inter-league competition so long as players' intra-league rights went unprotected. This financial benefit has accrued to every class member since the initial temporary restraining order against an NBA-ABA merger was obtained in April 1970. As demonstrated by the experience of professional football, salaries drop precipitously (and certainly do not increase) when the only competing elements in the market for players' services merge and when the surviving league continues its restraints on players' freedom to negotiate. By forestalling the merger until the NBA's intra-league practices were eliminated or modified in this Settlement Agreement, this salary decrease was prevented. Indeed, Petitioner's success in obtaining the injunction actually led to a dramatic increase in salaries, since salary competition from ABA teams steadily increased since 1970. Even after allowing for inflation, Petitioner conservatively estimates that through the end of this season the entire class has benefitted by $10 million at the barest minimum as a result of continued inter-league competition. In 1969-1970, the season in which this suit commenced, the median salary in the NBA was approximately $35,000; by 1971-1972 it was $55,000; and today it is approximately $100,000.

(b) A related benefit was the maintenance of competition for player services between the two leagues which resulted from Petitioner's contempt motion described in ¶11, supra. As a result of this motion and Judge Tenney's opinion thereon, the leagues were precluded from effecting an inter-league restraint which, as a practical matter, would have effectively precluded movement (or the potential for movement) between the leagues by players with a consequent negative impact on class members' salaries.

(c) Another significant interim benefit to the class was the NBA's modification of one of its intra-league restraints, the reserve clause, during the pendency and as a direct result of this action. In an unsuccessful effort to overcome Congressional opposition to the merger (generated to a great degree by Petitioner's activities in Washington on behalf of the class) and to settle this action, the NBA in August 1971 decided upon and in September 1971 implemented a change in the Uniform Player Contract, replacing the perpetual reserve clause then in effect with a one-year option clause. This change permitted increased freedom of movement and negotiating leverage for all NBA players.

(d) The benefits to the class of Petitioner's efforts in obtaining class certification and prevailing on the class discovery question also are readily apparent. The expenditure of hundreds of thousands of dollars which would have been incurred in attempting to litigate these issues in separate actions or in complying with discovery demanded of each class member (e.g., defending an additional 400 depositions) was avoided. The delay of trial which necessarily would have been occasioned by the individual discovery of all class members sought by the NBA also was avoided, thus maintaining pressure on the NBA defendants to settle. Finally, the discovery burdens upon most class members were eliminated entirely since 85 per cent of them were not subjected to any discovery, while at the same time the burden on those class members who were deposed was eased substantially by the Court's restrictions upon the scope of inquiry.

The Settlement Agreement

26. The most direct present and future benefits to plaintiffs and the class, of course, are provided by the Settlement Agreement itself, which is structured so as to provide the maximum benefit to each class member depending upon his particular situation. The settlement provides two categories of benefit to the class -- participation in the Settlement Fund and elimination and modification of NBA practices which will mandate increased competition for players' services from this date forward. Each aspect of the settlement was passed upon by a group of players -- some active and some retired, both named plaintiffs and class members -- before it was agreed upon by Petitioner. Moreover, on March 2, 1976 under Court supervision, a letter outlining the settlement in principle was mailed to the class members, none of whom has made any adverse comment to date.

(a) Settlement Fund -- Prior attempts by the NBA defendants to settle involved the offer of nothing in terms of a settlement fund. It was only by Petitioner's years of persistent efforts to effect a settlement on terms most favorable to the class that the Settlement Fund was obtained in the amount of $4.3 million. This sum is to be divided among 479 class members. Because competition for players' services has increased steadily since 1966-1967, the settlement formula provides that class members who played in the earlier years of the damage period (during which salaries were much lower and competition was at its nadir) will receive a greater share of the fund than those who played in later years. This distribution further is most equitable because these older players are either retired or nearing the end of their careers, and thus will not realize the benefits of the changes of NBA practices

which younger players will enjoy. Each class member will share in the cash settlement and, depending on the years in which he played, can receive up to $30,000. Of course, such a large recovery by individual class members is quite rare in class actions.

(b) Modification and Elimination of Intra-League Restraints -- As a result of Petitioner's efforts, the settlement will result in dramatic changes in the intra-league practices of the NBA. Unlike the situation that exists in other sports, NBA basketball will be completely restructured so as to recognize and protect players' economic rights. The active class members not only will share in the Settlement Fund, but also will have the opportunity to greatly increase their future salaries because in providing for immediate elimination of the reserve clause and a phase-out of the reserve compensation plan the settlement immeasurably increases the player's negotiating posture. Plaintiffs agreed to a phase-out of this latter practice rather than its immediate elimination, because defendants in any event would likely have maintained the practice during the course of trial and appeals. Players will no longer be bound by the uniformly imposed reserve clause, even if it appears in their present contracts, and thus will be able to bargain with any team for a salary reflecting their true value immediately upon expiration of their contracts. Future players will benefit greatly by the drastic reduction in the duration of an NBA team's draft rights and the seminal changes made in the hardship draft rules. Further, the Settlement Agreement provides that this Court shall retain jurisdiction over the case to assure that the NBA complies with its agreement not to reimpose the challenged practices, and creates a procedure for hearing disputes on the enforcement

of the Settlement Agreement before a Special Master. Thus, the class will not be subjected to differing interpretations of a set of rules that impact all players identically.

(c) Attorneys' Fees and Costs -- Furthermore, the $4.3 million settlement in no way will be decreased by the allowance of attorneys' fees and costs sought in this Application. Rather, the NBA defendants will bear the entire burden of such fees and costs in addition to paying the $4.3 million Settlement Fund. The fairness of the attorneys' fees here cannot be questioned. First, the total amount of such fees to date is about 19% of the Settlement Fund going to the class, and no more than three or four per cent of the total direct monetary benefit which has accrued to the class over the course of this litigation. Such fees represent but an infinitesimal fraction of a per cent when the future benefits to be derived by the class from the changes in the NBA's practices are also considered. Second, the request here is limited to fees based on the Petitioner's ordinary hourly rates applied at the time the legal work was performed for the class. Petitioner seeks no premium despite the fact that as a matter of law, a class counsel which has skillfully and diligently prosecuted an action and has obtained either such a favorable settlement or such substantial benefits for the class during the course of the litigation (much less both, as here) is entitled to a sum well in excess of its normal rates. It should be emphasized that Petitioner has been sole counsel of record for all plaintiffs and the entire class to date* and no attorneys have intervened in the action or in any way aided Petitioner's six-year prosecution of this case. As noted, no prior private or government action, much less any judicial precedent, existed before this action to aid Petitioner.

* One player, Chester Walker moved last month to displace Petitioner as his counsel. That motion has not yet been determined.

PETITIONER'S TIME CHARGES INVOLVED

27. The following is a breakdown of the time spent by Petitioner's attorneys on the Robertson case issues. It must be noted that the amount of dollars reflects the attorneys' billing rate as of the time work was performed and not the higher figure that would be derived by using the current billing rate.

Attorney	Total Hours	Fee
Peter Gruenberger	2,726.95	$269,319.91
James W. Quinn	2,389.45	149,480.50
Irwin H. Warren	1,933.85	82,598.50
Kenneth Lemberger	429.90	23,644.50
Robert G. Sugarman	378.00	31,705.00
Ira M. Millstein	317.25	46,387.50
Joel B. Harris	315.85	21,453.00
Jeffrey Frackman	314.92	15,746.00
Stephen E. Jacobs	198.50	21,835.00
Mark A. Jacoby	184.50	15,427.50
Robert A. Weiner	173.40	9,537.00
Henry J. Tashman	122.20	6,110.00
Peter D. Standish	42.90	3,646.50
Joseph H. Weiss	29.50	1,622.50
Gregory M. Perry	24.50	1,715.00
A. Paul Victor	23.25	2,557.50
Jane Levine	20.50	820.00
Martin D. Ginsburg	13.50	2,025.00
Alan B. Miller	11.50	1,150.00
Michael Emont	9.00	450.00
Irving Scher	7.20	792.00

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Attorney	Total Hours	Fee
Alan R. Johnson	7.00	525.00
Lynn H. Schafran	7.00	315.00
Freda Bein	6.00	270.00
William Maderer	5.50	275 00
Thomas C. Cullinan	5.03	176.05
Jeffrey N. Rich	4.60	299.00
Arthur F. Abelman	4.42	309.40
Charles Seligson	2.00	300.00
Marshal C. Berger	1.50	97.50
Hillel Raymon	1.30	58.50
Janet M. Meiburger	1.00	45.00
Steven J. Shore	.90	54.00
Nancy L. Buc	.80	52.00
Donald Moss	.58	23.20
Joseph W. Gelb	.50	45.00
Martin B. Amdur	.40	34.00
Andrew Levine	.30	15.00

28. Significantly, no attorneys' fees are sought for the work of Lawrence Fleisher, Esq. Mr. Fleisher has devoted thousands of hours as a lawyer on behalf of the class in this case on tasks including drafting, counseling, negotiating the settlement, organizing the players' efforts in Congress, and helping to arrange for depositions of (and accommodations for) players, to name just a few; and all of this in addition to his long and arduous testimony. Despite his clear right to seek a substantial award of attorneys' fees, he has made no such request so that the players will receive maximum monetary benefits.

29. Consistent with Petitioner's efforts to accomplish its tasks with the least possible expense, legal assistants ("paralegals") and summer law clerks were utilized whenever possible. For example, paralegals were used to assist in document discovery and production, and as the litigation progressed and the volume of work increased, more paralegals were assigned to that function and to assist attorneys in preparation for depositions and to perform the arduous task of digesting the tens of thousands of pages of player, owner and league representative depositions. As a result of this judicious use of legal assistants, attorneys' time was spent on duties which only an attorney can perform. The following is a summary of the time which each paralegal and summer law clerk spent on this case:

Summer Law Clerks and Paralegals	Total Hours	Fee
Sandra Siegel	1,513.40	30,268.00
Suzanne Stultz	1,199.40	23,988.00
Elizabeth Stark	283.20	5,664.00
Pam Furer	258.50	5,170.00
Ellen Odoner	222.40	5,560.00
Suellen Raiff	135.70	2,276.50
R. L. Grayman	87.20	2,180.00
J. R. Fialkoff	45.50	1,137.50
Tova Cavell	26.50	530.00
Henry Doyle	17.60	352.00
Ruth Lese	12.00	240.00
Vincent Whalen	10.20	204.00
J. Davidson	6.50	162.50
H. R. Reiss	4.00	100.00

Summer Law Clerks and Paralegals	Total Hours	Fee
Jane Singer	3.50	70.00
Albert Pacelli	1.70	34.00
Michael Brown	1.50	52.50
J. Ratner	1.33	33.25
E. Rosenberg	.50	12.50

30. Thus the aggregate number of Petitioner's billable hours is 13,546.08, which includes 9,715.45 attorney hours and 3,830.63 paralegal and summer law clerk hours. The total fees are $788,951.31, and the average rate per billable hour for attorneys is $73.00 and for paralegals and summer law clerks is $20.00.

COSTS AND EXPENSES

31. As of March 31, 1976, out-of-pocket costs and disbursements actually expended on behalf of the class since the inception of this action aggregated $122,701.05. These costs were necessitated in large measure by the frequent travel of many persons, numerous depositions and hearing transcripts and the voluminous document reproduction undertaken since 1970. The costs were kept at a minimum whenever possible. It is unnecessary to emphasize that the class members in no way could have maintained separate litigations at this huge cost.

PAYMENT SCHEDULE OF FEES AND EXPENSES

32. As noted above, Petitioner's attorneys' fees incurred through April 15, 1976 total $788,951.31, and disbursements actually expended for the class through March 31, 1976

total $122,701.05. In addition, reimbursement is sought for $41,021.77 of attorneys' fees which were billed by and actually paid to Washington counsel who are noted above. Thus, the total fees applied for are $829,973.08, plus such disbursements.* As set forth in the Settlement Agreement such amounts and all amounts hereafter incurred until the Settlement is finally approved (including any appeals) will be paid by the NBA into escrow as set forth below. The obligation to pay such fees and expenses is unsecured, unlike the obligation to pay the Settlement Fund to the class which is fully secured by the proceeds from the NBA's network television contracts.

- $200,000 within ten days following execution of the Settlement Agreement
- $400,000 on November 10, 1976
- $300,000 on January 10, 1977
- the balance on April 11, 1977 if the Settlenent is finally approved by that date;
- the additional balance, if any, on July 10, 1977 or ten days after whichever occurs first.

CONCLUSION

33. In light of the substantial benefits which have been obtained for the class as a result of Petitioner's efforts Petitioner respectfully submits that the fees herein requested unquestionably are fair and reasonable, and the Court should approve the payment by the NBA of such fees, costs and disbursements as noted above.

PETER GRUENBERGER

Sworn to before me this
29th day of April, 1976

Notary Public

* Those class members who have paid special assessments towards Petitioner's counsel fees (a maximum of $900 of assessments were paid by some class members) will receive reimbursement therefor from Petitioner out of the fees paid by the settling defendants, as approved by the Court.

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The New York Times SPORTS

TUESDAY, FEBRUARY 3, 1976

N.B.A., Players Reach Tentative Pact on Suit

By SAM GOLDAPER

Special to The New York Times

PHILADELPHIA, Feb. 2 — The National Basketball Association and its players reached a tentative agreement today for an out-of-court settlement of the Oscar Robertson suit.

The N.B.A. Players Association will meet tomorrow with Larry Fleisher, its general counsel, before the league's 26th annual All-Star game to vote approval of the major aspects of the pact.

The class action suit was instituted in 1970 by Robertson, then a player for the Milwaukee Bucks, on behalf of all the players. It contends that the common draft, the option clause and the N.B.A. equivalent of football's Rozelle rule, which compensates a team a player has left to sign with another, violate the antitrust laws.

The suit was scheduled to go to trial on June 1 before Federal Judge Robert L. Carter in New York. Peter Gruenberger, the lawyer for the players, and David Stern the league lawyer, have notified Judge Carter of the progress that had been made today.

After almost a month of negotiations between committees of owners and players, common ground for the settlement of the sticky issues of compensation and the draft have been found.

Instead of the compensation clause, which owners had insisted upon, there has been substituted the right of first refusal, starting in 1980.

This means that at the end of a player's contract he has the option to deal with any club in the league. His old club then has the right to match any offer of another team in order to keep the player.

Meanwhile, the option clause in present player contracts—which in effect have bound a player to his original clubs for a year after his contract expires—will be deleted from N.B.A. pacts after this season.

As for the college draft, a player must be signed by the team that drafted him within one year or he returns to the draft pool. Previously, the rights to a player remained the property of the team that had drafted him.

A Long Meeting

In recent years the courts and labor arbitrators have ruled that club owners do not own the rights to players they have drafted and never signed, or players whose contracts have expired.

After almost seven hours of owner meetings today Larry O'Brien, the N.B.A. commissioner, said: "The board of governors approved the interim report from its advisory committee concerning the on-going negotiations with the players of the N.B.A. The report indicated that substantial progress had been made with the respect to the so-called Robertson [illegible]."

When the commissioner was asked if the tentative settlement had been reached, he said, "Those who know me think I'm a pessimist by nature, but as I sit here today I am an optimist."

Negotiations between a five-man advisory committee of owners appointed by O'Brien and four current players, plus Robertson and Fleischer, began on Jan. 6 in New York.

The owners' group included Mike Burke, president of the Knicks; William Wirtz of the Chicago Bulls, Richard Bloch of the Phoenix Suns, Abe Pollin of the Washington Bullets and William Alverson of the Milwaukee Bucks. The representatives of the players were Paul Silas of the Boston Celtics, president of the players Association; John Havlicek of the Celtics, the vice president; Jeff Mullins of the Golden State Warriors and Jim McMillan of the Buffalo Braves.

'All Issues Settled'

"We have reached enough of an agreement for me to go to the players tomorrow for approval," said Fleisher. "No issues involving the Robertson suit remain outstanding. They have all been settled."

In 1974, Herman Sarkowsky, then an owner of the Portland Trail Blazers, represented a group of owners and reached an agreement with a group of player representatives that would have eliminated the option clause and replaced it with the right of first refusal. The owners never acted on his agreement.

This time, however, the five-man committee was persistent. After agreeing among themselves, they went out and sold the other owners on the settlement.

Burke and Pollin met with the Eastern Conference franchise owners; Alverson and Woods met with those in the Midwest and Bloch with the West Coast owners.

Trial Not Wanted

Some of the members of the advisory group arrived earlier than most owners yesterday and met into the early hours of the morning with Fleisher and Gruenberger.

"Neither side wanted to go to trial with the case," said Burke, one of the prime movers for the out-of-court settlement. "Common sense dictated that we establish a sensible framework within which all of us in basketball can work successfully."

The advisory committee will continue to work with the players in an effort to reach an agreement for a contract to replace the one that expired last June 1. When that is done, the lawyers for both sides would then petition Judge Carter for the dismissal of the Robertson suit.

When that is done, the N.B.A. and the American Basketball Association will also be free to discuss a possible merger, should they wish to. They have been unable to do so without the players' involvement as long as the Oscar Robertson suit remained pending.

BEST COPY AVAILABLE

February 4, 1976

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A Basket of Goodies —From NBA to Players

By Bill Verigan

Philadelphia, Feb. 3—The NBA owners and players settled their five-year dispute over the Oscar Robertson case out of court today with a stunning agreement that virtually swept away the option clause and reserve clause and limited the player draft.

By capitaulating on every issue, including a $5 million cash settlement, the owners appeared to gain mainly the opportunity to merge with the ABA, a move that would push down player salaries by eliminating the competition. However, NBA president Larry O'Brien dashed merger speculation by stating: "The board of governors of the NBA is unanimously opposed to merger of the NBA with any other basketball league, and all representatives of the NBA are instructed to take no action or make any statement inconsistent with this policy."

While the players treated the settlement like a major victory, smoking cigars at the announcement, several owners still adamantly opposed it.

Bradley Happy

The agreement affects about 500 players, anyone active in the NBA during or since 1970. If any of them dissent, they will be given a hearing, "and free psychiatric care," added Bill Bradley. The Knick player rep was only voicing the players' satisfaction with the deal.

Paul Silas of the Celtics said, "I'm delighted. Players will benefit from this agreement for the next decade."

Player Association counsel Larry Fleisher called it "an equitable, workable system, an historic change in pro basketball." He said the agreement was possible "because the owners would have to be totally foolish not to see the handwriting on the wall, the resolve of our players in fighting the case and perhaps Judge Carter's open court admonitions to settle."

While concessions to the owners appeared minimal, O'Brien said, "We established a structure for the next decade under which all parties might live and prosper." He simply seemed relieved to have the Robertson suit finished.

Jerry Colangelo of Phoenix summed it up for the owners by saying, "Some might think it was unfavorable but it was the best we could get. We could have made the same settlement several years ago, and what was the use of waiting several more years?"

Mike Burke, president of the Knicks and one of the engineers of the settlement, admitted, "There was opposition to some of the threats, but they were part of the entire fabric."

Point by point, here is how the agreement breaks down:

- The option clause will be eliminated at the end of this season. In the past a player was bound to his team one year — the option year — beyond the term of his contract.
- Rookies who sign a one-year contract will still be subject to an option year, but they can get around that easily enough by signing for two or more seasons.
- A "first refusal" rule will be substituted for the present compensation system, basketball's answer to pro football's Rozelle Rule.

Presently, a team that signed a player who had played out his option had to compensate his former team. Compensation has usually been given in players as determined by the commissioner.

Under the new setup, the player's original team will be given a "first refusal" — the chance to match an offer from another team. There will be no compensation if the original team does not match the offer and the player goes elsewhere.

The "first refusal" rule will go into effect in 1980, giving the owners time to adjust to the situation.

- If a college player is unsigned within one year by the team that drafts him, he is eligible to be drafted by another team. If he is still unsigned after two years, he becomes a free agent and can negotiate with any team.
- The owners will pay the players' lawyers fees.
- The owners will make a $5 million cash settlement, which will be distributed among nearly 500 players according to the damages they suffered.

The agreement will be in effect 10 years.

All that is needed to implement the agreement appears to be court approval from Judge Robert Carter, (Federal Court-District of New York), who will examine the details on Friday.

A slight misunderstanding appeared to exist between owners and players over when the agreement will actually go into effect, however. The owners and O'Brien said it will not be effective until an entire collective bargaining agreement is completed, but Fleisher said it will go into effect immediately after court approval.

At any rate, collective bargaining over such issues as the pension and local media is expected to be settled quickly now that the Robertson case is out of the way.

NBA option issue resolved by out-of-court settlement

The Philadelphia Inquirer
Wednesday, February 4, 1976

By Bill Livingston
Inquirer Staff Writer

The National Basketball Association Players Association yesterday accepted the compromise out-of-court settlement of the Oscar Robertson lawsuit challenging the legal structure of the sport.

Under the agreement:

• The option clause as it is presently constituted will disappear from NBA contracts, said Players Association counsel Larry Fleisher.

The option clause, which binds a player to one team, will be abolished after the 1976-77 season. In its place will be "right of first refusal," in which a player can sell his services to a new team but must submit that team's best offer to his old club. If the original team matches the offer, he must stay with it.

This was a surprising development since some owners were known to have been opposed on the grounds that such an arrangement would favor the richest teams, such as New York or Los Angeles.

• There will be no compensation for a team losing a player. Previously, if a player jumped to another team, the NBA commissioner dictated compensation for the first team.

• The college draft will be modified. Instead of the current drafting system—which gives a team negotiating rights to a player forever—a player will be able to refuse the offer of the team that drafts him and revert back to the drafting pool after one year. After a second such refusal, he becomes free to deal with any team.

The compromise on the draft is effective immediately; the option change after 1976-77, and the compensation change for the 1980-81 season.

Robertson, a former All-Star guard with Cincinati and Milwaukee, filed the suit on behalf of all the players of the NBA in 1970. The legal action sought to give players greater freedom of movement by challenging the option clause, the compensation arrangement and the player draft.

Robertson's suit had effectively blocked any chances of a merger that all ABA clubs had been seeking. Three ABA clubs — Baltimore, Utah and San Diego — have already folded this season. A fourth team, the Virginia Squires, is reportedly in danger of folding.

Fleisher said the agreement will be presented to the players for a vote, then turned over to a federal judge in New York for final approval.

The settlement was widely viewed as a chance for a possible merger with the struggling American Basketball Association.

Paul Silas, president of the NBA Players Association, said, "We left the doors open for a merger. We welcome competition. If they (the ABA) want their own league, fine. If they want to merge, fine. We took off all the restraints."

However, the draft modification is not retroactive. NBA teams will still own negotiating rights to players in the ABA. It was that system that eventually brought, for example, George McGinnis to the 76ers.

Siver General Manager Pat Williams, contacted after the announcement, said, "There were no merger thoughts or discussions at all (in the owners' meeting Monday). The league (NBA) is in the position where there's no reason to send up smoke signals or little flags of merger. We hear Virginia (of the ABA) may go under tonight, by Friday at the latest.

"For example, the New Orleans Jazz used a first-round pick (in a special NBA draft) to take Moses Malone (of the ABA Spirits of St. Louis). Los Angeles used a first-round pick to take Mark Olberding (of San Antonio). For New Orleans to just wink at those picks, no way. For Atlanta to say to David Thompson, 'You just stay in Denver,' no way."

In Atlanta, Prentiss Yancey, general counsel for the ABA Players Association, said, "I'm very concerned about the compromise concerning draft rights. The issue of the draft rights affects the ABA more than the NBA."

Yancey said the ABA players have filed a separate suit alleging that the NBA retention of draft rights violates antitrust laws. It is still pending.

The NBA reportedly has been conducting secret meetings to explore the possibility of the NBA incorporating ABA teams in Kentucky, Indiana, Denver and New York.

The official NBA stance, however was to unanimously adopt a resolution opposed to merger.

"Representatives of the NBA have been instructed to take no action or make any statements inconsistent with this policy," said Commissioner Larry O'Brien.

Chicago Tribune
Wednesday, February 4, 1976

Owners, players make peace in NBA

By Bob Logan
Chicago Tribune Press Service

PHILADELPHIA—The National Basketball Association owners opened the door for a merger Tuesday in a landmark agreement with their players, then slammed it in the face of the stunned American Basketball Association.

A day of far-reaching decisions which will change the course of all pro sports began with the NBA Players' Association gleefully announcing the terms of a 10-year deal giving them all they had fought—and more.

It was such an unconditional surrender by the owners that dazed listeners figured it must have been signed on the deck of the U.S.S. Missouri.

ANOTHER BOMBSHELL dropped a few hours later when Commissioner Larry O'Brien, confirming the agreement, announced that the league had decided to shun merger, even though the players' long fight against it ended with Tuesday's settlement.

Thus, after committing itself to an outlay of some $4 million to buy off its athletes, the NBA told the world it was ready to spend still more in a financial fight to the finish with the ABA. They were betting that the other league would sink in a sea of debt and allow players like Artis Gilmore [whose rights belong to the Bulls] to be recycled.

"The Board of Governors of the NBA is unanimously opposed to merger with any other basketball league," O'Brien said, quoting the text of a resolution passed here Tuesday.

THE SETTLEMENT, described by the commissioner as "give-and-take," was labeled by a dissenting NBA owner as "us giving and the players taking." Lawyers from both sides will seek approval Friday from Federal Judge Robert Carter, ending the players' antitrust lawsuit against the league [the so-called "Oscar Robertson case"].

The owners gave ground in every area of the so-called "freedom issue," besides picking up the tab for the lawyers [$1 million] and paying off the 500 athletes who were plaintiffs in the class action suit—another $3 million worth. The college draft option clause and compensation procedures of the NBA were overhauled drastically in the players' favor, with permanent guarantees.

IN A NUTSHELL, the setup provides:

● Any player drafted from now on who is not signed goes back into the draft the following year. If still unsigned after a second year, he becomes a free agent, available to the highest bidder.

● Effective immediately, all one-year rookie contracts will contain an additional year's option. Starting in 1976-77, the option clause, which binds the player for another year when his contract ends, will be eliminated [unless both player and club agree to keep it in force].

● The present compensation system [the NBA's version of the "Rozelle Rule," which provides that a team signing a free agent after his option year must compensate his former club] will remain in effect through 1980, when "first refusal" will replace it. Under that plan, Team A is given a chance to match Team B's salary offer to one of A's players whose contract has expired. If Team A agrees to match it, the player must stay with his club; if not, he can go elsewhere.

THAT'S THE FINAL step in what Larry Fleisher, the brilliant director of the NBA Players' Association, termed a "phase-in agreement" which ends in 1986. He called it "something we can live with," while others more accurately labeled Fleisher's coup a smashing victory for the athletes, who now have their cake and get paid for eating it.

Along with recent court decisions, Tuesday's developments clearly spell doom for football's Rozelle Rule and similar player restraints in other sports.

Fleisher and O'Brien moved quietly and effectively to prevent the chaos which might have resulted from a less ironclad settlement, though the pressure of an impending antitrust trial forced the NBA to give up more than it wanted to.

THE $3 MILLION ransom goes to all NBA players active when the Robertson case entered Carter's Manhattan Federal Court in 1970. The statute of limitations stretches back to 1966, so the court will supervise payments to them for "damages" they suffered over that stand.

"We're delighted," said Fleisher. "The phase-in was agreed on to prevent a three- to five-year court battle. We know the owners can operate just like any other business, without antitrust violations.

"You have to be totally foolish not to read the handwriting on the wall, especially after Judge Carter told the owners the book would be thrown at them if they didn't settle. The players were determined to see it through after all the time and effort we've expended, even if we had to camp on the courthouse steps."

NOT EVERYBODY agreed with O'Brien's rosy summation that "We have taken a giant step eliminating horrendous litigation."

Outspoken Owner Paul Snyder of Buffalo, dissenting forcefully, termed it "a lousy deal. L-O-U-S-Y. The worst deal in the history of sports.

"It invites tampering. Agents should have a field day. We definitely were the losers, creating competition among ourselves. From now, on, the ABA will be an easier opponent than each other.

"The mistaken thinking was that the cost of settling would be less painful than going through with the court action. I don't agree."

BUT O'BRIEN, who has covered a lot of ground in resolving the deep split between players and owners since taking office eight months ago, had the votes and the prestige to swing it. He sent a five-man advisory committee, including Bill Wirtz of the Bulls, around the league to sell reluctant owners on the settlement, and was elated at the outcome.

"What we have accomplished here is a structure for NBA growth and progress in the next decade," the commissioner said in a burst of New Frontier dialog. "Our television committee is meeting now with CBS on a new long-term contract and those negotiations look promising.

"This has to be a good-faith agreement," he said when the possibility of collusion by NBA clubs to keep salaries down was raised. "I believe it will work."

"THE OVERALL collective bargaining agreement with the players [whose three-year contract with the owners ended last June] still must be finalized. That's basically a laundry list of pension terms, meal money, and so on.

"There's no machinery yet for resolving disputes in the new system. We'll let the lawyers work them out. I have to be impressed with what's happened."

And the ABA? "NBA clubs probably will retain some rights to those players [now in the ABA], said lawyer David Stern.

Obviously, both the players, contentedly smoking Red Auerbach-model victory cigars, and their bosses would be satisfied to see the rival circuit die—though for different reasons.

1119

(212) 541-7118

NATIONAL BASKETBALL PLAYERS ASSOCIATION
15 COLUMBUS CIRCLE
NEW YORK, N. Y. 10023

Paul Silas, President
John Havlicek, Vice President
Wes Unseld, Vice President
Bob Lanier, Secretary
Lawrence Fleisher, General Counsel

March 1, 1976

Re: Oscar Robertson, et al. v. NBA, et al.

Dear Class Member:

In the past few weeks you may have learned from the news media that a settlement in principle has been reached between the players and the NBA Board of Governors in your class action antitrust suit.

As you have been notified in the past, you are a member of the class. This letter is being sent to you to keep you current on the present status of the settlement.

After reaching agreement with the owners, your attorneys and the NBA attorneys met with Judge Carter to outline the settlement terms. The Court is aware that the parties are in the process of drafting the settlement papers, which necessarily are not simple documents. The Court will be requested to review the settlement agreement after it has been signed and presented to him; then, if the Court directs, a notice from the Court will be sent to you setting a hearing date. Only after such a hearing will the settlement become final.

The settlement essentially deals with two areas. First, present practices in the NBA which have been the subjects of your antitrust action will be eliminated or changed. The draft system will change; the option clause will be eliminated from all present and future contracts, except for voluntarily negotiated clauses and certain rookie contracts; and compensation between teams when a free agent signs with a new team will be phased out and replaced with a right of first refusal.

Second is a Settlement Fund of $4.3 million which will be paid over an eight-year period by the owners to the class of approximately 480 members. Each class member will receive a share of the Settlement Fund according to a formula to be proposed to the Court which is based on the number of seasons he played during the period 1966-67 through 1975-76. The NBA owners did not participate in determining this formula. Because of different prevailing economic

conditions, the earlier years in that period are weighed more heavily than later years, so that depending on the number of full years you played and the particular years involved, under the proposed formula you could receive between $1,000 and $30,000. The owners will also pay all legal fees to counsel for the class in the Robertson case, which means not only that the Settlement Fund will not be decreased, but also that the special assessments will be returned to the class members who made such payments.

Let me repeat; the exact terms of the settlement have not been finalized. When they have been, hopefully in the next month, they will be presented to the Court. If the Court is satisfied, you will receive a formal notice outlining what procedures are to be followed before the settlement receives final Court approval.

Best regards.

Sincerely,

Larry

Lawrence Fleisher

LF:CAP

1121

WEIL, GOTSHAL & MANGES

767 FIFTH AVENUE • NEW YORK, N.Y. 10022

TELEPHONE (212) PLAZA 8-7800

CABLE "WEGOMA"
TELEX
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423104
CHARLES SCHIDLOW
COUNSEL

June 2, 1976

Richard G. Phillips, Esq.
David Berger, P.A.
1622 Locust Street
Philadelphia, Pennsylvania 19103

Re: Oscar Robertson, et al., v.
National Basketball Association, et al.,

Dear Richie:

This is to confirm our telephone conversation today wherein I made clear to you and Paul McMahon of your office our position that plaintiffs do not believe the discovery requests you filed last week on behalf of Chet Walker are either timely or proper. Nevertheless, as I told you and Paul, we will continue to make every effort to cooperate with your office and our entire file in the Robertson case is available for your inspection subject, of course, to the confidentiality stipulations which have been entered into by the parties to the action. Of course, as I noted in our conversation, these files have been available to you for many months now. Accordingly, your failure to seek until now to review them must be viewed in the same light as your delay in filing the motion to postpone the date of the Class Action Settlement hearing.

Also, although I do not know to what proper use you would put this information, in a further effort to cooperate I am listing below the names of those individuals who took part in the negotiations relating to the settlement of the Robertson action.

For the plaintiffs: Lawrence Fleisher, Paul Silas, Oscar Robertson, John Havlicek, Jeff Mullins and Jim McMillian with Peter Gruenberger, Ira M. Millstein, Stephen Jacobs and James W. Quinn acting as counsel.

For the defendants: Lawrence O'Brien, Simon Gourdin Richard Bloch, Abe Pollin, William Alverson, Michael Burke and Arth Wirtz with George Gallantz, David Stern, Michael Cardozo, Harvey Benjamin and Jeffrey Mishkin acting as counsel.

Finally, as I indicated to Paul on the telephone, since you have been supplied with copies of the Settlement Agreement and the Exhibits thereto, we believe that even if your discovery requests were proper you have already been supplied or given access to all the information which you have any right to obtain.

Sincerely,

WEIL, GOTSHAL & MANGES

By _____
James W. Quinn

JWQ:dt

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., Plaintiffs, -against- NATIONAL BASKETBALL ASSOCIATION, et al., Defendants.	70 Civ. 1526 (RLC) SETTLEMENT ORDER NO. 1

WHEREAS, the above-captioned action was brought by plaintiffs individually and as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure; and

WHEREAS, on February 14, 1975, this Court ordered this action to be maintained as a class action pursuant to Rule 23(b)(1) of the Federal Rules of Civil Procedure on behalf of all persons who were active players in the National Basketball Association between the playing season that included April 16, 1970 and the entry of final judgment in this case; and

WHEREAS, notice of the pendency of the class action was mailed to all members of the class pursuant to the order of this Court dated September 15, 1975; and

WHEREAS, a Stipulation and Settlement Agreement dated April 29, 1976, a copy of which is annexed hereto as Exhibit 1, has been entered into; and

WHEREAS, it appears to this Court, based upon its review of the Stipulation and Settlement Agreement and pre-trial conferences that a sufficient showing has been made regarding the fairness, reasonableness and adequacy of the proposed settlement set forth in the Stipulation and Settlement Agreement and Plan of Distribution on file with this Court so as to warrant the sending to the class of a notice of settlement; it is hereby

ORDERED, that a Notice of Class Action Settlement in the form annexed hereto as Exhibit 2 is in compliance with Rule 23(e) of the Federal Rules of Civil Procedure, and it is further

ORDERED, that ~~at least thirty (30) days prior to the hearing to be held pursuant to the next paragraph~~ on May 5, 1976, class counsel, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, shall mail by first class mail to the last known address of each class member, the Notice of Class Action Settlement and that, in addition, a Notice of Pendency of Class Action, dated September 19, 1975, shall be sent to those class members who became members of the class during the 1975-76 National Basketball Association playing season. Proof of such mailing shall be filed by class counsel at or prior to such hearing; and it is further

ORDERED, that a hearing, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, shall be held before the undersigned on June 23, 1976 at 10 A. M. in Room 318 of the United States Courthouse for the Southern District of New York, Foley Square, New York, New York, for the purposes of (a) determining whether the proposed settlement of this action on

the terms and conditions set forth in the Stipulation and Settlement Agreement are fair, reasonable and adequate and should be approved by the Court and if approved, (b) determining the allowance to be made to class counsel of their fees and expenses to be paid in accordance with the Stipulation and Settlement Agreement. The hearing may continue from time to time without further notice, and it is further

ORDERED, that any member of the class may appear at the hearing in person or by counsel and show cause, if he has any, why the proposed settlement should not be approved as fair, reasonable and adequate, and why allowance to class counsel for their fees and expenses should not be made, provided that, no later than June 4, 1976, any person who intends to appear in opposition to the settlement: (i) files a written notice of intention to appear; (ii) submits copies of any and all papers, affidavits and briefs to be submitted in opposition to the settlement, upon (a) the clerk of the court, (b) Weil, Gotshal & Manges, attorneys of record for plaintiffs and the class, and (c) Proskauer Rose Goetz & Mendelsohn, attorneys for the NBA.

Dated: New York, New York
May 4, 1976

Robert L. Carter
U.S.D.J.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

OSCAR ROBERTSON, WILLIAM BRADLEY, JOSEPH CALDWELL, MELVIN COUNTS, JOHN HAVLICEK, DONALD KOJES, JON MC GLOCKLIN, MC COY MC LEMORE, THOMAS MESCHERY, JEFFREY MULLINS, WESTLEY UNSELD, RICHARD VAN ARSDALE and CHESTER WALKER, individually and as representatives of all present and further active players in the N.B.A.,

Plaintiffs,

-vs-

70 Civ. 1526

N.B.A., a joint venture, MADISON SQUARE GARDEN CENTER, INC., MADISON SQUARE GARDEN CORP., ALL N.B.A. TEAMS AND OWNERS, PRO BASKETBALL, INC. and AMERICAN BASKETBALL ASSOCIATION,

Defendants.

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February 17, 1976
5:00 P.M.

B E F O R E :

HON. ROBERT L. CARTER,

District Judge.

A P P E A R A N C E S :

BERGER, PHILLIPS, SPRAGUE & COHEN, ESQS.,
Attorneys for Plaintiff Chester Walker
RICHARD G. PHILLIPS, ESQ., of Counsel

PROSKAUER, ROSE, GOETZ & MENDELSOHN, ESQS.,
Attorneys for Defendant N.B.A.
MICHAEL A. CARDOZO, ESQ.
RICHARD L. WASSERMAN, ESQ.
M. WILLIAM SCHERER, ESQ., of Counsel

PAUL, WEISS, RIFKIND, WHARTON & GARRISON, ESQS.,
Attorneys for Madison Square Garden
Corporation and Madison Square Garden Center, Inc.
SIDNEY STEIN, ESQ., of Counsel

ALSO PRESENT:

WEIL, GOTSHAL & MANGES, ESQS.,
Attorneys for Plaintiffs, and the Class
PETER GRUENBERGER, ESQ., of Counsel

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MR. CARDOZO: Your Honor, I don't believe that unless Mr. Phillips is prepared to put in an affidavit controverting my affidavit that he has any right to an evidentiary hearing.

I'm prepared to argue the preliminary injunction motion, but I think the first issue to resolve is whether or not we are going to have an evidentiary hearing, in which event I'm prepared to put in evidence.

THE COURT: Well, I think that as I understand the issues, you are not entitled to a preliminary

injunction without at least an affidavit, and he certainly is entitled on the basis of your affidavit and on the basis of what I have indicated to him about the purpose of today's hearing to have an evidentiary hearing on the matters.

He is contesting you. You are in the position where he may make a demand that you put on some evidence, even with an affidavit, in order to get a preliminary injunction.

But I don't think that the rules require that he have to submit one in opposition to you, if he wants in lieu of that to come here with evidence in an evidentiary hearing.

Now, if he does not come here with any evidence and controverts your affidavit -- he has presented nothing to controvert it, and certainly argument is not controverting the facts that you state in the affidavit.

Let's proceed.

MR. CARDOZO: For the sake of completeness, then, if your Honor please, I'd like to have marked as N.B.A. Defendant's Exhibit A a copy of the summons and complaint filed in this action on April 17, 1970.

(Defendant's Exhibit A marked for identification)

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MR. CARDOZO: As Exhibit B -- is that in evidence?

THE CLERK: Do you have any objection?

MR. PHILLIPS: No.

(Defendant's Exhibit A received in evidence)

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MR. CARDOZO: As Defendant's Exhibit B I'd like to have marked the second amended and supplemental class action complaint.

(Defendant's Exhibit B received in evidence)

xxx

MR. PHILLIPS: No objection.

MR. CARDOZO: As Exhibit C, I'd like to have marked this Court's ruling on the class action motion of February 14, 1975. It appears in 389 F. Supp., 867.

(Defendant's Exhibit C marked for identification)

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THE CLERK: Do you have any objection?

MR. PHILLIPS: I'd like an offer of proof on that, sir.

THE COURT: On what?

MR. PHILLIPS: On the entry of the decision as rendered in the National Basketball Association, Oscar Robertson versus N.B.A., as to just what -- I'd

like to know what Mr. Cardozo seeks to establish with this decision.

THE COURT: Well, that is all right.

I do not see why he has to file it as an exhibit before me. All he has to do is refer to it. I do not see why we have to burden the record with filing it. It is not going to help one way or another if you refer to what I said in it. It is my decision, isn't it, my ruling?

MR. CARDOZO: Yes. I just thought for the sake of completeness we should have it all in.

THE COURT: I certainly ought to be in a position to take judicial notice, if it is pointed out to me, of my own opinion.

MR. CARDOZO: All right. I'd like to mark as Exhibit D a copy of this Court's order of September 11, 1975, directing that a notice of class action be sent to the members of the class and defining the class.

(Defendant's Exhibit D marked for identification)

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THE CLERK: Any objection?

MR. PHILLIPS: May I see it, please?

The only objection, sir, is as to the relevance.

THE COURT: I do not understand how on the

basis of the position that you know Mr. Cardozo is taking in the matter how you can even suggest that it is not relevant. If that is an objection, it is overruled.

MR. PHILLIPS: Yes, sir.

THE COURT: You may certainly argue that he is incorrect but on the position he has taken it is obviously relevant.

(Defendant's Exhibit D received in evidence)

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MR. CARDOZO: I'd like to have marked as Exhibit E a certified copy of the complaint filed in the United States District Court for the Southern District of Pennsylvania, entitled Chester Walker v. National Basketball Association.

MR. PHILLIPS: No objection.

(Defendant's Exhibit E received in evidence)

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MR. CARDOZO: I'd like to have marked as Exhibit F, plaintiffs' motion for a temporary restraining order in the action entitled Chester Walker v. National Basketball Association.

MR. PHILLIPS: No objection.

(Defendant's Exhibit F received in evidence)

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THE COURT: Is your motion filed?

MR. CARDOZO: Mr. Walker's motion for a temporary restraining order in the Philadelphia action --

THE COURT: I am getting confused. I am getting plaintiffs confused here.

MR. CARDOZO: That concludes the N.B.A. defendants direct case, your Honor.

THE COURT: All right.

MR. PHILLIPS: If your Honor please, I would like to call as a witness Mr. Gruenberger.

MR. CARDOZO: I think this is a highly unusual, to say the least, procedure, your Honor, and I think before a member of the Bar of this Court, who is representing the plaintiffs here, is called to the witness stand, we should at the very least have some explanation from Mr. Phillips as to what he expects to prove from Mr. Gruenberger.

THE COURT: Mr. Gruenberger, I am a little unclear about the posture of this case. Mr. Cardozo, for the N.B.A., has made a motion to enjoin the action in Philadelphia.

MR. GRUENBERGER: Yes, your Honor.

THE COURT: Now, as the matter stands before me, the defendant has made that motion.

MR. GRUENBERGER: Yes, your Honor.

THE COURT: This time was set because the matter certainly directly affected the plaintiffs.

MR. GRUENBERGER: In this case.

THE COURT: In this action, that is, the plaintiffs Robertson, et al.

MR. GRUENBERGER: Yes, your Honor.

THE COURT: I suppose what I am trying to find out is whether you had intended on behalf of the plaintiffs to do anything other than be an observer or did you intend to be a participant in the matter.

MR. GRUENBERGER: I intended only to sit here and make sure that my job as counsel for the plaintiffs and the class, which I consider a fiduciary relationship, is carried out and make sure the class as a whole was not injured in any way by this proceeding.

THE COURT: All right. Then on those circumstances, I do not believe that -- I would have some problem about it if I were going to actively participate in this phase of the case or if we had a jury, but under the circumstances, I do not know what he wants to call you about, but let's see how it goes.

MR. GRUENBERGER: Mr. Phillips told me for the first time in the hallway --

MR. PHILLIPS: May we see you at the side bar on this?

MR. GRUENBERGER: Let me get on the record, Mr. Phillips.

THE COURT: There is nothing for the side bar. There is nothing but the Court, the reporters, and my clerks, I think another one is there, and the lawyers in the case.

MR. GRUENBERGER: Mr. Phillips, for the first time in the hallway twenty minutes ago, told me he intended to call me as a witness and I told him I would resist that because I didn't think it was a proper thing to do.

THE COURT: All right. Well, you are not participating in this case, and --

MR. GRUENBERGER: This phase of the case.

THE COURT: This phase of the case, and I am certainly not going to be influenced because you are a lawyer, as the jury might be, participating in it, so let's get it over with.

It will be a new experience for you, anyway, Mr. Gruenberger. It may be a chastening one for you, too.

MR. GRUENBERGER: Is that on the record?

PETER GRUENBERGER, called as a witness, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PHILLIPS:

Q Would you state your occupation, sir?

A I'm an attorney.

Q And do you represent --

THE COURT: We know he does.

MR. PHILLIPS: Fine.

Q Mr. Gruenberger, are you privy to the terms of the settlement, the proposed settlement between the Players Association and the National Basketball Association, sir?

MR. CARDOZO: Objection, your Honor. I can't see whether or not Mr. Gruenberger is familiar with the terms of the proposed settlement, what relevance that has to the issue before this Court.

THE COURT: Well, he can answer -- he obviously is privy to it because I know he is and he can answer yes. But I do not see any objection to that. The objection is going to come after he answers yes.

MR. CARDOZO: All right.

THE WITNESS: The answer is yes to the extent

that settlement terms have been reached to date. They are not finalized.

THE COURT: I might as well tell you, Mr. Phillips, that Ithink I indicated to you two weeks ago, whenever you were first here, if the purpose of that question is now to ask Mr. Gruenberger to discuss the terms of the settlement agreement in this fashion, that will not be allowed. I told you that in no way would you get involved in any terms of the settlement.

MR. PHILLIPS: I understand that.

THE COURT: All right.

Q Mr. Gruenberger, are you familiar with Chester Walker's present situation?

A I don't know what you mean by that question, Mr. Phillips. If you mean by the situation that Chester Walker declined to play for the Chicago Bulls team in the N.B.A. this year, this past season, the '75, '76 current season, which was the option year on his contract, yes, I am familiar with that.

Q And you are familiar with the fact that Mr. Walker is not now playing, is that correct?

A I'm familiar with the fact that Chester Walker declined to play for Chicago and announced his retirement in the press, and he's not playing, yes, I am familiar

with that.

Q The terms of the settlement, as you know the, sir, do they affect in any way Chester Walker's right to play basketball in the National Basketball Association during the 1975, '76 basketball season?

THE COURT: I indicated to you that you are doing precisely what I told you you could not do.

MR. PHILLIPS: I'm sorry, sir. I understood --

THE COURT: None of the terms of that settlement or what it is and so forth in regard to any matter is going to be discussed in this proceeding. The notice of what those terms are will be provided to Mr. Walker along with every member of the class when the arrangements are made.

MR. PHILLIPS: If your Honor please, may I briefly interrupt my examination of Mr. Gruenberger to supply the Court with a motion for a preliminary injunction on behalf of Chet Walker within the Oscar Robertson versus the N.B.A. suit and our memorandum in support of plaintiff Walker's request for a preliminary injunction, which I will ask the clerk to have filed in the morning and ask your Honor to set a date for a hearing on our motion for a preliminary injunction.

MR. CARDOZO: May I be heard as to that?

THE COURT: I do not understand how that can be done. As I understand this litigation thus far, and I suppose I am going to have to allow you to do it at some point, if that is what Mr. Walker wants to do, but Mr. Walker, as I understand it, is represented, not only as a member of the class, but as one of the named parties to this litigation; is that true?

MR. CARDOZO: Yes.

MR. PHILLIPS: That's correct.

THE COURT: And as one of the named parties to this litigation, he is represented by Mr. Gruenberger and Mr. Gruenberger -- I have no notice of any motion by him to have Mr. Gruenberger relieved and resubstituted as counsel for him in these proceedings -- point number one, which is one of the principal things which has to occur before any notice such as that could be made.

MR. PHILLIPS: I would then ask the Court to entertain my motion to enter my appearance at this time on behalf of Chester Walker.

THE COURT: I think the rules of this court are that in terms of substitution of counsel that the matter has to have an affidavit filed with reasons set forth. You will have to have Mr. Walker file an affidavit, asking this Court to substitute his counsel.

That should be served by Mr. Gruenberger before you can proceed in this matter.

MR. PHILLIPS: Will the Court allow me to enter my appearance on behalf of Mr. Walker?

THE COURT: Of course not.

MR. PHILLIPS: Without having --

THE COURT: No. Not here, no. Not under the present circumstances.

MR. PHILLIPS: Judge, this is the case that we are presently litigating. As I understand it, we are litigating now within the Oscar Robertson versus the N.B.A. case.

THE COURT: Perfectly right, but Mr. Walker, as far as I understand it, and, of course, as far as the records in this case are concerned, is represented by Mr. Gruenberger. If he wants to relieve him and so forth, he will follow the proper form, the proper procedure that we allow in this court.

MR. GRUENBERGER: Your Honor, may I say something, not as a witness but as counsel for the plaintiffs on this very point -- not as a witness -- that bears directly on this point.

THE COURT: I know, but you cannot stand in the witness box and argue as a lawyer. Are you finished?

Are you through with Mr. Gruenberger as a witness?

MR. PHILLIPS: I just wanted to interrupt --

THE COURT: If you are through with Mr. Gruenberger as a witness, then we can proceed with this other matter. But if you are going to proceed with him as a witness, we will leave it, because obviously at this point he may have a right to say something. That matter certainly personally involves him, directly involves him and his representation. If you are through with him, he can step down.

MR. PHILLIPS: Judge, in light of the fact that your Honor has ruled that I can't go into the terms of the settlement so that I can exhibit to the Court the fact that the proposed settlement will have no effect on Chester Walker, then I would ask Mr. Gruenberger to step down and conclude the testimony.

THE COURT: All right.

MR. PHILLIPS: Unless there is cross examination. I don't see how there could be.

THE COURT: I doubt there is any cross examination.

MR. CARDOZO: I have no cross examination at this time. I may reserve the right to recall Mr. Gruenberger if it becomes necessary.

THE COURT: All right.

(Witness excused)

THE COURT: Now, Mr. Gruenberger, you have your hat on as the lawyer for the plaintiff, and you are in a position, if Mr. Phillips is through on this particular point, you are in a position --

MR. CARDOZO: Before we get to that, could I have a copy of this document that was just filed? I have never seen or heard of it.

THE COURT: Well, the document cannot be filed because Mr. Phillips is in no position to file such a document.

MR. PHILLIPS: I'd ask that Mr. Gruenberger then join with me in the motion for a preliminary injunction on behalf of Mr. Walker. I will take this opportunity to provide --

THE COURT: Mr. Phillips, this is a charade, and there is no point in getting ourselves involved here. The matter that has been brought up has been pending in this court since 1970. In 1972 or '73, maybe it was '74, I'm not sure, the parties proceeded, while proceeding with the matter of discovery, to get their case ready for trial.

Now a preliminary injunction, at least insofar as the terms for that injunction, has been issued and has

been outstanding for some time, barring the defendants from negotiating and from merging with the A.B.A, and from negotiating outside of the presence of the plaintiffs.

But a preliminary injunction of the kind that you seek, it's been obvious that that injunction would require an evidentiary hearing which we contemplated would take on behalf of the plaintiffs in this action some long time -- I don't think we even estimated it, but it certainly would be a matter that by the most optimistic estimate was going to take eight weeks. It was set down for June the 1st.

Now two parties have apparently reached accord, and it does not make any sense for you to come in with the matter about which there is all the evidence to come in now, even if you got over the question of your right to be here in the first place, attempting to represent this man, for a preliminary injunction when the issues which are keyed to a preliminary injunction on your part are going to require two or three months of evidence. And that hearing has been set, it was set for June.

Now, this is a charade. It makes no sense.

MR. PHILLIPS: Judge, I am not aware of the fact that the evidentiary hearing on the preliminary injunction would take two or three months.

THE COURT: Well, the point is that you have not been aware of the amount of deposition testimony and so forth. It may well be that you apparently now feel that you may come in, on your narrow issue in regard to your particular individual, and thereby seek to show that his rights have been violated, so forth and so on, but the whole point is that the underlying basis for that is something which the plaintiffs represented by Mr. Gruenberger have been dealing with and would have to present evidence on, and the defendants would answer that, and that is a matter which we know will take a very extensive time.

MR. PHILLIPS: All I can say in that regard is when we were in front of Judge Ditter in Philadelphia, that Judge Ditter was moved to deny the temporary restraining order on the basis that the counsel for the National Basketball Association, they being represented in Philadelphia by Nader, Harris, Segal and Lewis in the person of Bernard Smollens, indicated to the Court in no uncertain terms that they could complete a hearing on a preliminary injunction in a morning and that they would do so with a stipulation, and Mr. Smollens and I agreed that we would stipulate to just about all of the facts and that there were very few facts in controversy here and we would place the matter before Judge Ditter.

MR. CARDOZO: Your Honor, I would like to note that that is a misstatement of fact. I have spoken extensively with Mr. Smollens and that is not correct at all.

MR. PHILLIPS: I would like to say that it happens to be true because I was there.

THE COURT: Well, all right, Mr. Phillips, all I can say is that maybe they tend to be far more efficient in Philadelphia than we are able to be in New York.

But there is no -- I have been living with this case now for almost three years, and there is no way, if the matter were to go to trial, that this could be settled in any evidentiary hearing that could be concluded at this time.

MR. PHILLIPS: Yes, sir.

THE COURT: All right. Where do we stand now?

MR. GRUENBERGER: Your Honor, I think that -- I'm not in the witness box now, I am standing as a lawyer, I just want to make it clear as how I am speaking now, as a lawyer for all the plaintiffs and class members in this case, and I would like to shed some light on their point of view on this proceeding.

I know it is late, and I am going to take a very brief time, if your Honor allows it, but it goes to the very heart of what your Honor was discussing with Mr. Phillips and what Mr. Phillips discussed with me, and I had the grace not to call Mr. Phillips as a witness.

THE COURT: Mr. Gruenberger, I got you out of the posture of being a witness, and certainly I gave you permission to participate in the proceedings at the present time since what Mr. Phillips is attempting to do certainly directly involves you, so that you may proceed.

MR. GRUENBERGER: Thank you very much.

The first time that I ever spoke to Mr. Phillips in my life on any matter was three or four days after the hearing that Mr. Cardozo brought in this court on the Wilt Chamberlain matter when Mr. Cardozo argued the preliminary injunction motion against Mr. Boone a few weeks ago.

On that occasion Mr. Phillips called me and asked me whether I was familiar with Mr. Walker's situation, that is, Mr. Walker's having declined to play for Chicago this year, in the option year ofhis contract, and had announced his retirement saying he would no longer play for Chicago. I told him yes, I was familiar to that

extent.

I asked Mr. Phillips what his interest was. He told me he was considering bringing a separate action on behalf of Mr. Walker to try to get Mr. Walker the opportunity to sign a contract with another team in the N.B.A. for this season. This was sometime in late January.

I told Mr. Phillips -- first I asked him whether he would intervene in this action on behalf of Mr. Walker, because I never heard of Mr. Phillips as representing Mr. Walker, and he said no. I told him also that there was a similar proceeding brought by Mr. Chamberlain in California, which Mr. Cardozo had moved against, had obtained a temporary restraining order as to, and that your Honor was holding decision off in that case only because there was a jurisdictional question open on the ground that Mr. Chamberlain was a class member and there was just a small question open.

But otherwise, your Honor, I told Mr. Phillips, you would have ruled from the bench against Mr. Chamberlain's California action. I told Mr. Phillips also, in light of the fact that Mr. Walker was a named plaintiff, that I felt certain that if he did bring an action in Philadelphia against the N.B.A. the N.B.A. would have no choice but to move in this court to enjoin such an action, and I thought

that that injunction would be filed -- a motion would be filed immediately by Mr. Cardozo.

We discussed on that occasion what your Honor's reaction might be to such a motion by Mr. Cardozo, and I told Mr. Phillips that I believed that he would lose here.

Then we discussed the problem of what to do about Chet Walker, and I told him that Mr. Walker was a client of mine, had been for six years, that there was no person greater than I or my firm or anybody else connected with the plaintiffs in this case who sympathized with Mr. Walker's probelm but there was nothing that I could see that I could do to get Mr. Walker to play this year in light of the fact that we have been litigating for six years over a whole host of the antitrust issues of the N.B.A. practices, and I didn't think on the isolated issue of a one year option that that was illegal, considering all the defenses that the N.B.A. had raised for six years, whether I could get him a preliminary injunction in this or any other court before the season.

God knows, I wanted Mr. Walker to get every right he could in any court. I told Mr. Phillips that. Mr. Phillips told me that he would call me back before he decided to do anything. Mr. Phillips never called me

back and I read in the newspaper on January 31st, Saturday morning, that he had filed an action in Philadelphia for Mr. Walker.

The next time I spoke to Mr. Phillips was on the evening of February 2nd, I was at a dinner in Philadelphia with Mr. Stern, David Stern in this case, and other people. The only thing I discussed with Mr. Phillips after having been introduced to him for the first time that night in my life was whether or not Chet Walker had fired me as an attorney, and he said absolutely not.

The next time I spoke to Mr. Phillips was on February 6, 1976, a few minutes after I returned to the office having met with Your Honor and others in court that morning to describe in terms the proposed settlement.

Mr. Phillips asked me what those terms were. I said to him that they were in the newspaper and those were essentially correct. I didn't discuss the terms of the settlement with him. He told me that he had no intention of objecting to the settlement on behalf of Chet Walker or any of the other players represented in contract negotiations.

He told me all he wanted to do was to get a hearing on his attempt to get Chet Walker to play in the N.B.A. this year. He told me also that he thought the

proposed settlement, as he read about it in the newspaper, was a good thing for everybody, including Chet Walker, except that it didn't get in his view and in his reading Chet Walker to play this year.

He told me he realized that he was asking this Court and the Court in Philadelphia to do more than any other Court had been willing to do, that is, to hold a one year option illegal per se as a matter of law unconnected with any other restraint.

I told him yes, that I never asked a Court to hold that illegal, unconnected with any other restraint that I had alleged in this complaint, and I told him in my judgment there was no way that I could get Chet Walker on that ground to play this year without a hearing that would take several months.

Mr. Phillips then went on to tell me that he didn't want a trial on the merits for Mr. Walker at all, all he wanted was to get Chet Walker traded from the Bulls, the Chicago team, to another team, and I told Mr. Phillips that is great, how do we force Chicago to trade Mr. Walker, I will do anything I can to help in that regard, but how do I get a Court to do that.

Now, your Honor, I may sound heated here, I feel like I'm in the position of having an attorney come in like this telling me that, on the one hand, that

he's got a client that I have, the client hasn't fired me, but he wants to come in and appear on his behalf instead of me, he wants me to join his papers that I have never read and he goes and asks me questions about something that is not final and subject to Court approval on the witness stand. I have never been so outraged in my life.

Chet Walker, on the other hand, is a different problem, and I'd like to see Chet Walker helped any way he can be helped, but I have a responsibility to five hundred class members. Where was Mr. Phillips for the six years that we were fighting this case?

THE COURT: All right. I don't think that --

MR. PHILLIPS: May I respond to some of that, sir?

THE COURT: I am sorry Mr. Gruenberger, that your statement has involved your conversations with Mr. Phillips. I do not really think that is going to help matters at all.

Obviously now that you have done it I am going to have to give Mr. Phillips equal time. Go ahead, Mr. Phillips.

MR. PHILLIPS: I don't require equal time, sir. The only reason that I speak is because I think that

the things said by Mr. Gruenberger were rather unseemingly, and the only reason I speak to them is I don't want silence on my part to indicate that I agree with anything that Mr. Gruenberger said, and when I finish here I don't want points that I didn't cover to indicate that I agree with Mr. Gruenberger's statement to this Court.

Mr. Walker came to me complaining about the fact that he had been represented by counsel in Ohio and that he was represented by Mr. Gruenberger here in New York but that no one was ever doing anything for him.

Mr. Walker asked me what it is that I thought could be done for him. It is true that I called Mr. Gruenberger, Mr. Gruenberger informed me that Wilt Chamberlain had filed an action in Los Angeles. The fact that Mr. Gruenberger felt certain as to how this Court would react if I filed an action, your Honor, or that Mr. Gruenberger said that it was his impression that the Court would have ruled from the bench were it not for a jurisdictional issue, was of no significance or movement to me in making a decision as to how I would proceed on behalf of Chet Walker.

I did, however, take elaborate steps to determine exactly what had happened here in the Chamberlain case. I called Mr. Boone no less than three times, one time

on a conference call with Mr. Walker to discuss with Mr. Boone what he was doing for Wilt Chamberlain. Mr. Boone described to me a much different set of circumstances in that he did not ask for any preliminary relief, was not asking for a temporary restraining order or a preliminary injunction in his case.

And Mr. Boone described something entirely different from Mr. Gruenberger's description of what happened in this court, when the N.B.A. took its action, and that is that Mr. Boone described it to me as that he had himself agreed voluntarily to stay the action in Los Angeles until sometime after the case before this Court was finally determined feeling that he could still litigate damages in Los Angeles and that the issues that were before this Court would be res judicata.

That is the ground as far as my conversations with Mr. Gruenberger and what he had advised me were his thoughts about what this Court would do, and what I did thereafter. I felt as though it was an entirely different matter where I was proceeding in behalf of Chester Walker to try to get him what I felt was the necessary relief and the relief which he sought and relief which he apparently had talked over with Larry Fleisher -- not apparently, according to Chet Walker, he had talked over with Larry

Fleisher the possibility of getting him a preliminary injunction he wanted the right to play this season. That's what I have attempted to do for him. That's what I continue to attempt to do for him.

I assure this Court that in the very near future there will be an application supported by an affidavit from Mr. Walker asking that Mr. Gruenberger be relieved and that I be substituted as counsel in this action.

THE COURT: All right.

MR. PHILLIPS: I have indicated to this Court that after I filed the action in Philadelphia that when the motion for temporary restraining order and preliminary injunction was brought before this Court, I said Ihave no objection to my motion for preliminary injunction being heard by this Court and if this Court was taking jurisdiction over this case for the reason that it had all the issues before it for the last six years, that then this Could should allow me a hearing on a preliminary injunction.

Your Honor indicated at that time that I would not be allowed, be permitted a hearing on preliminary injunction, you felt as though the remedy and the relief that Chester Walker could properly seek would be to object to the settlement.

After learning of the terms of the settlement, I found that they did not provide any relief for Chester Walker and therefore I came to the court today with a motion for a preliminary injunction. I had called your clerks a week ago, asked for a meeting wherein I could file such a motion and have your Honor set down a date for a hearing on a preliminary injunction.

I was informed that your Honor would not be ameniable to that but I could file the papers if I so desired. I felt since Mr. Cardozo's position is that -- as outlined in his letter, and as stated to me in the past, that I am maintaining that I am entitled to a hearing -- I am entitled to go forward in Philadelphia only because I'm not getting a favorable ruling in this court on a preliminary injunction, or I might not, that is not the truth.

I feel as though I have the right to go forward in Philadelphia for the reason that this Court has indicated that I will not be allowed in this court to seek the relief which I seek for my client, that being a preliminary injunction, and relief from under the option clause.

THE COURT: All right.

MR. PHILLIPS: That is simply put, sir.

THE COURT: The action in Philadelphia will be enjoined and you may submit, Mr. Cardozo, some proposed findings.

Insofar as the intervention in this matter is concerned, the rules of the court provide that if there is going to be any substitution of counsel that appropriate affidavit with reasons be filed and those will be served on Mr. Gruenberger and you may file those. Then we will decide how to proceed from that point.

There will be no hearing on any preliminary injunction in terms of any intervention. The way that you are to proceed with this matter is in terms of, as I indicated to you last time, that is if you want to -- if Mr. Walker, as a member of the class, and one of the named parties in this action, in the terms of the settlement -- of the proposed settlement submitted to the class, he may at that point intervene and object and raise questions about it in terms of it as it meets his problem.

He is a member of the class. As far as I can -- as far as I know, and as I recall -- I am not exactly certain of this, but I am reasonably sure that the class which I have determined is one in which Mr. Walker is a named party, but is one in which the members of the class could not opt out, so that the class is fixed.

Obviously, any member of the class, in the terms of this agreement, who opposes settlement will have an opportunity to present objections to it to indicate in what way they feel it does not meet their particular problem, they can seek modifications of it and so forth.

And that is the sole way this matter can be proceeded upon by you in this court, Mr. Phillips.

MR. CARDOZO: Two things. I would still repeat my request that whatever document it is that Mr. Phillips handed up to the Court, regardless of whether or no it was accepted for filing, I believe the proper procedure would be that I am entitled to see a copy.

THE COURT: It is not filed in this court, because he is in no position to file any document like that at the present time.

MR. CARDOZO: Second of all --

THE COURT: But you got a copy of it, I gather.

MR. CARDOZO: Yes. Thank you. I would like to reiterate what Mr. Gruenberger mentioned before, that if a hearing had to be held, in our judgment it would take at least two months to air all the issues that would be involved.

THE COURT: Of course. There is no point

in emphasizing that because the point is that the issues that have to be settled in Mr. Walker's case are basically the underlying issues that have to be settled for all members of the class.

And the proof in regard to the antitrust issues that are raised as affect him have to be settled for the members of the class and it may well be that there is a particular problem insofar as he is concerned that is unique.

But that unique problem cannot be settled unless the underlying problem has been -- the evidentiary hearing on that has been presented to the Court and some decision has been made on it. That was what was going to have to happen if this case went to trial.

MR. CARDOZO: Finally, your Honor, I would like to note -- and I say this with a great deal of hesitation -- it is my understanding of the rules of this court that parties should be represented by members of the Bar of this court. So in the event that we do get to the question of intervention, I'm not sure whether or not Mr. Phillips is a member of the Bar of this court, but that certainly would be another relevant issue.

THE COURT: Well, that is true. That issue of course -- wehave some difficult obviously with that

question because he was dragged up here from Philadelphia, where I am sure he would prefer to be -- by your motion, it may well be that if Mr. Walker wants him to represent him in this action that Mr. Gruenberger or someone will move for his admission for the purposes of this case.

The problem is that I think that insofar as this matter is concerned that the only way that he can proceed is in the way I have indicated. It may well be that there will be other members of the class who would want to make various representations. I don't know that.

The point is that it is a class action. There has to be notice and the parties have to have an opportunity to object, and that procedure will be followed.

Anything further?

MR. CARDOZO: Thank you, your Honor.

THE COURT: I would appreciate your having the proposed [illegible]dings before me without undue delay, and with notice to Mr. Phillips and Mr. Phillips may file -- when are you proposing to file?

MR. CARDOZO: I think we could get them to you by Thursday.

THE COURT: All right.

MR. CARDOZO: By the end of the day on Thursday.

THE COURT: You may file some proposed findings on your own then, Mr. Phillips, by Thursday. I want to get this matter out of the way. All right, good night.

MR. PHILLIPS: I want the record only to reflect that with regard to the statements made by Mr. Gruenberger, that those which I did not refute in my -- in argument, I do not thereby assent to.

THE COURT: All right.

(Time noted: 6:00 p.m.)

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WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Peter Gruenberger	10			

EXHIBIT INDEX

Defendant	Identification	In Evidence
A	3	4
B		4
C	4	
D	5	6
E,F		6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,	:	70 Civ. 1526 (RLC)
Plaintiffs,	:	
-against-	:	AFFIDAVIT OF MAILING
NATIONAL BASKETBALL ASSOCIATION, et al.,	:	
Defendants.	:	

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

IRWIN H. WARREN, being duly sworn, deposes and says:

I am a member of the Bar of this Court and am associated with the firm of Weil, Gotshal & Manges, attorneys for the plaintiffs in this action. Pursuant to Order of this Court, dated May 4, 1976, I personally supervised the mailing of the Notice of Class Action Settlement to members of the class defined in this Court's Notice of Pendency of Class Action dated September 19, 1975. Copies of the Notice of Class Action Settlement in the form annexed as Exhibit J to the Stipulation and Settlement Agreement dated April 29, 1976 were sent to the 479 class members on May 5, 1976. In addition, copies of the Notice of Pendency of Class Action were mailed with the Notice of Class Action Settlement to the 49 players who became members of the class subsequent to September 22, 1975. All such notices were

sent by first class mail to the last known address of each class member.

IRWIN H. WARREN

Sworn to before me this
5th day of May, 1976

Notary Public

NEIL A. SCHWARTZFELD
Notary Public, State of New York
No. 31-8880965
Qualified in New York County
Commission Expires March 30 '78

1163

United States Court of Appeals
FOR THE SECOND CIRCUIT

Cesar Robertson, et al.

Plaintiffs

v.

National Basketball Association et al.

Defendants

Wilton N. Chamberlain

Respondent - Appellant

Docket No. 76 - 7204

The undersigned hereby stipulate that the above appeal hereby is dismissed ~~may be withdrawn~~ without costs, ~~and~~ without attorneys fees and with ~~within~~ prejudice to the rights of any of the parties to this appeal.

Brown, Schatzel & Hamrick
by John H. Brown
Attorneys for Wilton N. Chamberlain
Respondent - Appellant

Spengler, Carlson, Gubar & Chanin
by Robert B. Schwartz
Attorneys for Long Island Sports Enterprises, Inc.

Paul, Weiss, Rifkind, Wharton & Garrison
by George H. Fellman per mw
Attorneys for Madison Square Garden Corporation and Madison Square Garden Center, Inc.
Defendants - Appellees

Proskauer, Rose, Goetz & Mendelsohn
by Michael A. Cooper
Attorneys for Defendants-Appellees National Basketball Association and its member teams except Madison Square Garden Corporation and Madison Square Garden Center, Inc.

Weil, Gotshal & Manges
by Peter Fleming
Attorneys for Plaintiffs - appellees

Dated:

SO ORDERED:

BEST COPY AVAILABLE

1164

OSCAR ROBERTSON, et al. v. NATIONAL BASKETBALL ASSOCIATION, et al.

70 Civ. 1526

ENDORSEMENT

Plaintiff Chester-Walker moves that the court postpone the date on which it will hear objections to the proposed settlement of this action so that he may have discovery of the parties concerning the fairness of that settlement. Walker's interrogatories have been filed with the court and served on plaintiffs. Counsel for the National Basketball Association ("N.B.A.") defendants, except Madison Square Garden Center, Inc., have already answered Walker's interrogatories. The plaintiff class declines to answer Walker's queries and joins the N.B.A. defendants in opposing the requested postponement. Walker's motion is denied.

There is no possible justification for delaying the hearing on the proposed settlement. This case has been pending for some time and a prodigious amount of discovery has taken place between the parties who anticipated trying the case this month. All had finished the discovery process before agreeing to settle. Such discovery is available to plaintiff Walker to inspect. I have been closely connected with the progress of the case and I am certain that a genuine adversary relation existed between the parties until settling. The class has been well represented by counsel who prosecuted the action with vigor. See Saylor v. Lindsley, 456 F. 2d 896, 901, 904, (2d Cir. 1972). Discovery was conducted in good faith to develop a complete record. There is no reason to start anew. City of Detroit v. Grinnell Corp., 495 F. 2d 448, 464 (2d Cir. 1974). Anything that plaintiff Walker could possibly seek is likely to be found in files that are open to him. See Girsh v. Jepson, 521 F. 2d 153 (3d Cir. 1975).

MICROFILM

Apparently, Walker has not availed himself of what is virtually a storehouse of available discovery prior to moving for a continuance. In addition, much of the information he requests is open to him in the Stipulation and Settlement Agreement and the exhibits attached.

Walker has known of the impending settlement of this case for some time. He, along with all class members, received a letter, mailed March 1, 1976, announcing that agreement had been reached in principle and that the exact terms would soon be presented to the court. Prior thereto, there was widespread publicity concerning the settlement agreement. In addition, on May 5, 1976 a detailed explanation of the proposed agreement was mailed to all class members. That notice informed Walker and all other class members that the full terms and conditions of the agreement are set out in the Stipulation and Settlement Agreement and the exhibits attached to it.

Walker is no stranger to the proceedings before this court in which he is one of fourteen named plaintiffs. Both he and his attorney, Richard Phillips, were deposed by the defendants. I must conclude that for some time he has known about the impending settlement, and of the extensive discovery that might be open to his inspection. Yet in spite of this knowledge, Walker waited nearly three months before attempting to gather information and moving for a one month continuance in order to do so. The basis Walker gives for wanting additional discovery indicates that he has not even examined the information open to him. He has made no factual showing of how he will be prejudiced by the impending settlement. Therefore, I refuse to "stop the settlement in its tracks, ... and ... force the parties to expend large amounts of time, money and effort" to answer Walker's inquiries. City of Detroit v. Grinnell Corp., supra, 495 F. 2d at 464. Walker has it within his power to be well-prepared to inform the court on June 23rd what the basis is for his objection to the settlement. See Saylor v. Lindsley, supra, 456 F. 2d at 901.

Accordingly, the motion is denied: the hearing will not be delayed; no other party need answer Walker's interrogatories.

SO ORDERED.

Dated: New York, New York
June 16, 1976

Robert L. Carter
ROBERT L. CARTER
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., Plaintiffs,	70 Civ. 1526 (RLC)
- against -	AFFIDAVIT IN OPPOSITION TO MOTION TO POSTPONE HEARING AND TO CONDUCT DISCOVERY
NATIONAL BASKETBALL ASSOCIATION, et al., Defendants.	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JAMES W. QUINN, being duly sworn, deposes and says:

1. I am a member of the bar of this Court and am associated with the firm of Weil, Gotshal & Manges, counsel for plaintiffs and the class herein. I make this affidavit in opposition to the motion of Chester Walker to delay the hearing of objections to the proposed class action settlement and to the attempt to obtain discovery from plaintiffs and their counsel concerning that settlement. The facts set forth below demonstrate that Walker is not entitled to either a postponement of the settlement hearing or discovery in connection therewith because of the inordinate delay of his counsel in making these requests and because the information sought has either already been supplied or is and has been available to Walker's attorneys for many months.

2. Walker is a named plaintiff in this class action which was commenced on April 16, 1970 and which has been actively litigated in the courts and before Congress and the National Labor

Relations Board for the past six years. For a complete history of the litigation, including the extensive discovery effort embarked on for many months, see pp. 3-22 of the Affidavit of Peter Gruenberger in Support of Application for Attorneys' Fees, Costs and Disbursements which is annexed hereto as Exhibit A. On May 27, 1976, almost four months after the announcement of the settlement of this action, Walker's counsel belatedly sought to postpone the settlement hearing claiming to need time for discovery "to explore the details of the proposed settlement". As set forth below, both Walker and his counsel have been aware of the details of this settlement since its very outset and should not now be permitted to benefit from their own delay in failing to seek information they do not even need.

3. On February 2, 1976, a settlement in principle of this action was reached between representatives of the plaintiffs and representatives of the NBA and its member teams. That settlement provides, inter alia, for the elimination or modification of the restraints attacked in the Complaint and payment of $4.3 million of damages plus costs and attorneys' fees. The fact that a settlement had been reached was widely reported in the newspapers and on television and radio and many of the stories in the media described in detail the terms of the settlement. See, for example, the newspaper articles which are annexed hereto as Exhibit B, including one from the Philadelphia Inquirer, the leading newspaper in the city in which Walker's attorneys are located, and one from the Chicago Tribune, the leading newspaper in the city in which Walker lives.

4. On March 1, 1976, with the approval of the Court, a letter was mailed to class members including Walker outlining

the basic terms of the proposed settlement. A copy of that letter is annexed hereto as Exhibit C. In addition, in February and March 1976, counsel for plaintiffs, Peter Gruenberger and Lawrence Fleisher, had several discussions with both Walker and his counsel, Richard Phillips, concerning the terms of the settlement. After several months of intensive negotiations between counsel for plaintiffs and the NBA defendants in which the precise terms of the settlement were finalized, the Settlement Agreement and Exhibits thereto were submitted to the Court in mid-April 1976. Thereafter, on May 4, 1976, the Court, having reviewed these documents, determined that the proposed settlement was "fair, reasonable and adequate" and ordered that a Notice of Settlement of Class Action be sent to each class member. The Notice provided, inter alia, that a hearing on objections would be held on June 23, 1976 and that all papers in opposition must be filed by June 4, 1976. On May 5, 1976, copies of the Notice of Settlement were mailed to each class member, including Walker.

5. Further, Walker's attorneys have known since at least February 17, 1976 that they might object to this settlement. On January 30, 1976, shortly before the settlement was announced Walker had filed a separate lawsuit against the NBA and its teams in the United States District Court for the Eastern District of Pennsylvania, containing allegations virtually identical to those contained in the Complaint in this action and seeking a preliminary injunction against the application to him of the NBA's reserve clause and reserve compensation rule. The Pennsylvania court refused to issue a temporary restraining order and on February 3, 1976, the NBA defendants obtained from this Court a

temporary restraining order enjoining prosecution of the Pennsylvania action. A preliminary injunction to that effect was granted on February 17, 1976. At the February 17 hearing on the injunction at which Walker was represented by his present counsel, this Court specifically noted that any claim that the proposed settlement of class action was inadequately protecting Walker's interest should be asserted by way of objection to the settlement at a subsequent hearing.

6. Despite this warning by the Court, Walker's counsel simply did nothing. At no time in the ten weeks between the February 17 hearing and the receipt of the Notice of Settlement did Walker's counsel request the opportunity to review any of the documents or deposition transcripts in our files or otherwise seek to prepare for the settlement hearing. Incredibly, still another three weeks passed after the Notice of Settlement was mailed before Walker's attorneys belatedly took any action to delay the hearing date. Walker's counsel took this action despite the fact that there remained a full month available for preparation between the date of their motion and the hearing date. Surely the seven weeks between notice and the hearing is more than adequate time in which to prepare objections.

7. Furthermore, Walker's attorneys as a practical matter simply do not need any of the discovery they now have propounded. Except for the list of deponents and interrogatories, which they could have obtained merely by asking us for a copy at any time in the last three months, they already have all information they have any right to receive. In response to Walker's attorneys' request, the names of the settlement negotia-

tors were provided by me in a letter earlier this week. This information, too, had never before been requested by Walker's attorneys. A copy of that letter is annexed hereto as Exhibit D. Other data has also been supplied. For example, in response to a request by Walker's counsel last week, we sent a copy of the Settlement Agreement together with a copy of the Class Counsel's Fee Application. In addition, I am informed that counsel for the NBA defendants has forwarded to Walker's attorneys a complete set of Exhibits to the Settlement Agreement. A review of this material will more than adequately respond to the requests for information contained in Walker's interrogatories and document request.

8. In light of the foregoing, there is no need either to postpone the hearing or to demand redundant or unnecessary compliance with the discovery requested by Walker's counsel. Any objections which Walker may have should be placed on the record immediately and can be heard on June 23, 1976.

James W. Quinn

Sworn to before me this
4th day of June 1976.

Notary Public

KENNETH LEMBERGER
Notary Public, State of New York
No. 30-4528406
Qualified in Nassau County
Commission Expires March 30, 1978

1172

Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., Plaintiffs, -against- NATIONAL BASKETBALL ASSOCIATION, et al., Defendants.	70 Civ. 1526 (RLC) AFFIDAVIT IN SUPPORT OF APPLICATION FOR ATTORNEYS' FEES, COSTS AND DISBURSEMENTS

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

PETER GRUENBERGER, being duly sworn, deposes and says:

1. I am a member of the bar of this Court and of the firm of Weil, Gotshal & Manges, the Petitioner on this Application. Petitioner has been sole counsel of record for plaintiffs, representing the entire class, from before the inception of this action in April 1970 to the present. As indicated more fully below, Petitioner, before this Court and the Congress, has protected and advanced the interests of all class members in eliminating restraints on their ability to negotiate contracts for their services and in obtaining compensation for their losses suffered as a direct result of those restraints. I submit this affidavit in support of Petitioner's Application (annexed hereto) for an award of reasonable attorneys' fees plus reimbursement for costs and disbursements as set forth below and in the Stipulation and Settlement Agreement dated April , 1976.

2. As any participant in this action (including the Court and our formidable and able adversaries) will attest, this class action and its settlement has involved anything but a normal, run of the mill case. This has not been a class action (a) in which the class determination was hardly, if at all, seriously touched upon, or (b) where the merits have not been severely tested, or (c) where little or no significant discovery of any kind has been undertaken, or (d) where the settlement is a cut and dried exchange of a release in exchange for a settlement payment which provides a miniscule recovery for each class member, or (e) where counsel for the class has sought a fee award involving a substantial premium further reducing the benefits to the class.

3. Rather, every issue in this action has been hard fought at every turn; the merits have been tested severely; intensive discovery of every kind has been engaged in; and the benefits from the prosecution and settlement of this action have already been and will continue to be vast and extremely beneficial to each class member. Substantial benefits have been accruing since 1970 during the prosecution of the action and the settlement itself involves not only a significant fund for the class but also drastic changes in the practices which were the subject of this action. Moreover, Petitioner seeks no premium fee for the 13,546 hours expended to date on this case, but simply its normal hourly charges based on its time records, so that the class will receive the maximum monetary recovery from the Settlement Fund. Set forth below is the relevant history of this litigation, including details of: the benefits that have accrued to plaintiffs and the class which greatly transcend the Settlement Fund itself; Petitioner's efforts in the prosecution and

settlement of the issues raised in this action which brought about those benefits; and Petitioner's request for an award of attorneys' fees and reimbursement of costs. Many of the facts recited below appear in this Court's opinion dated February 14, 1975 (389 F. Supp. 867) and in numerous other opinions of and transcripts of hearings before this Court.

I

HISTORY OF THE LITIGATION

A. Commencement and the Nature of the Litigation

4. This action was commenced on April 16, 1970 in this Court as a class action on behalf of all then present National Basketball Association ("NBA") players and all other persons who would become NBA players prior to the date of the final judgment. The defendants initially were the NBA and the 14 teams which at that time comprised the NBA (the "NBA defendants") as well as the American Basketball Association ("ABA").

5. The Complaint alleged violations by the NBA defendants of Sections 1 and 2 of the Sherman Act and had two main features: (a) a challenge, seeking preliminary injunctive relief, to the then proposed merger or consolidation of the NBA and the ABA or their member teams, which would have eliminated all inter-league competition for players' services; and (b) a challenge, seeking injunctive relief and trebled damages, to existing player allocation and retention practices in the NBA (including the college draft, reserve clause, and player lists), which had always prevented intra-league competition

for players' services in the NBA. Later amendments to the Complaint added practices subsequently imposed during the course of the action by the NBA defendants (such as the reserve compensation rule, akin to football's Rozelle Rule), or which were revealed in pre-trial discovery. Such amendments also added all new NBA teams as they joined the NBA, resulting in the naming of all of the present 18 NBA teams as defendants.

6. This action was the first challenge in any professional sport to the entire system of player allocation inherent in the practices of professional sports leagues, and was the first class action ever filed seeking to eliminate restrictions upon competition for players' services. It further was the first suit filed to enjoin the merger of competing sports leagues, despite the fact that four years earlier the National and American Football Leagues had merged, thereby eliminating all inter-league competition in professional football without providing any protection for the players.

7. Other than the early historic rulings that baseball was not subject to the antitrust laws, and later rulings that other sports were so subject, no judicial precedent of any kind existed as to the merits of antitrust claims in professional sports generally, and basketball in particular. No criminal or civil proceeding by the Justice Department, the Federal Trade Commission or any private party relating to any of the issues raised herein had preceded this action. And, Congress in 1966 had readily exempted the football merger from the ambit of the antitrust laws.

B. Prosecution of the Action

Relief Enjoining Merger of the NBA and ABA

8. Contemporaneous with the filing of this action, Petitioner sought on behalf of the class a temporary restraining order prohibiting any merger or consolidation of the NBA and ABA or any of their member teams and the effectuation of any non-competition agreement between the two leagues. Petitioner filed extensive briefs and affidavits in support of the motion and on April 17, 1970, after a hearing at which Petitioner argued on behalf of the class in favor of the motion, Judge MacMahon issued such a temporary restraining order.

9. On May 4, 1970, after Petitioner had filed further briefs and affidavits and after another hearing at which Petitioner argued, Judge Tenney issued a broad preliminary injunction forbidding any merger and non-competition agreement between the competing leagues (though recognizing the right of the defendants to seek an exemption from the antitrust laws for any such merger in Congress). The effect of Petitioner's effort before Judges MacMahon and Tenney are clear. First, inter-league competition for player services was maintained, thus preventing players' salaries from sliding back to pre-ABA levels (as had occured in professional football following the merger in 1966 of the two competing leagues) and, further, increasing salaries in the NBA as the ABA teams gradually became even more competitive in the market for player services. The NBA median salary has increased from some $35,000 in 1970 when the injunction was obtained to $100,000 today -- due except for inflation entirely to the injunction so obtained. Second, the need for a suit to "undo" an already-accomplished merger was eliminated -- relief which as a practical matter might

have been impossible to obtain. Third, the owners of the ABA and NBA teams were required to seek Congressional permission to merge following a preliminary ruling by the Courts that such a merger, absent special legislation (or absent protection of player rights) was per se illegal under the antitrust laws.

Congressional Hearings

10. Following the entry by the NBA and ABA into a Merger Agreement in May 1971, hearings over a two-year period were held by the Senate Subcommittee on Antitrust and Monopoly of the Committee of the Judiciary on the NBA and ABA owners' proposal for an exemption from the antitrust laws for the proposed merger. The players and counsel, including Petitioner, opposed such legislation, and as a result of their opposition, the Senate Committee unanimously refused to allow a merger, except on terms which would have modified or eliminated many of the NBA's intra-league practices which were being challenged in this action. Petitioner with Lawrence Fleisher, Esq. and Washington counsel(Clifford, Warnke, Glass, McIlwain & Finney)played a key role in this successful opposition to the merger. The NBA and ABA had gone before this Committee with a proposed merger bill which had received virtually unanimous endorsement from members of the Senate. In light of the professional football merger experience in 1966, legislative observers expected the Committee to report this bill quickly and without significant change. Nevertheless, counsel and the players refused to concede the merger issue and were instrumental in organizing and presenting the

players' case against merger to that Committee. Inter alia, counsel prepared statements by witnesses, testified themselves at length in those hearings, prepared exhibits, and in general helped compile a record that covers two large hearing volumes. So effectively was this case made for the players that the Committee's original position literally was turned around: instead of reporting out the NBA merger bill, the Committee unanimously reported out a bill protecting players' rights against the intra-league practices of the NBA challenged in this action as a condition to any merger. The NBA refused to support such conditions. As a result, no exempting legislation for the merger was adopted. The substantial economic benefits which have accrued to the players from the successful effort to maintain separate leagues competing for players' services are manifest, as discussed herein. The players have opposed merger so long as their rights were not protected. The settlement, described below, protects those rights.

Non-Communication Order

11. Petitioner's successful efforts to maintain competition which would have been eliminated by a merger during the 1970-1972 period were not limited to Congress. Petitioner further protected the class' interests in this Court on the very eve of those 1971 Congressional hearings. At that time, Petitioner learned that the NBA was attempting to obtain individual player support for the merger in what we considered an unfair manner. Despite the NBA's opposition, and the fact that class certification had not yet been granted, Petitioner obtained on behalf of the class an order from Judge Tenney precluding

the NBA defendants from discussing with any player the issues (including merger) which had been raised in this suit for an indefinite period, and at Petitioner's urging, severely limiting those defendants' communications with players, except in the ordinary course of business. As a result of this continuing relief (which the NBA unsuccessfully sought to terminate as recently as its January 2, 1976 motion (discussed in ¶18(e), infra)), the class has been able to maintain a high degree of cohesiveness so essential in this case which has extended over a six-year period. Thus, for example, nearly 80 present and former players (including five coaches) have been subjected to depositions fully probing their views of the case. In a situation such as exists in professional basketball, where such class members are in day-to-day contact with (and thus susceptible to constant pressure to capitulate to) their defendant-employers, obtaining and maintaining such non-communication order was imperative.

Contempt Motion

12. In the Spring of 1972, it appeared that the NBA and ABA had reached an agreement, reflected in an NBA Board of Governors resolution, not to sign players previously under contract with each other's teams, in an effort to eliminate or minimize competition for veteran players which appeared to be developing at that time. Petitioner immediately moved to have the defendants held in contempt of Judge Tenney's preliminary injunction which precluded the defendants from agreeing not to compete for players' services. Defendants opposed the motion, resulting in extensive affidavits and briefs

filed by Petitioner and another hearing before Judge Tenney. Although the Court did not hold defendants in contempt, Judge Tenney's opinion expressly adopted Petitioner's view that the NBA's resolution had the potential to be applied in a non- or anti-competitive manner, and he specifically warned the defendants that he would carefully examine any future charge or evidence of such a refusal to compete. The therapeutic value of Judge Tenney's warning is revealed by the competition for players between the two leagues subsequent to the issuance of that opinion, with the resulting economic benefits to players. Indeed, the NBA defendants themselves have on several occasions relied on that opinion, most recently to defend successfully charges by the ABA Players Association in another case relating to the NBA's proposed special draft of players under contract to ABA teams.

13. In July 1973, following Petitioner's successful efforts to block Congressional approval of the merger on the owners' terms, and following assignment of this action to Judge Carter, the ABA sought to amend Judge Tenney's preliminary injunction order so as to allow the NBA and ABA the unqualified right to discuss and effect a merger without such Congressional approval. Petitioner successfully opposed this effort too because it failed to safeguard the rights of the class. Ultimately, after a hearing before this Court, the Court issued a modified order which would allow NBA-ABA talks, but which carefully protected the interests of the class members, as follows: any NBA-ABA agreement to merge had to deal with and set forth the disposition of challenged NBA intra-league practices; counsel representing the class had to be present at any meeting at which

these subjects or others dealing with players' rights were discussed; and any agreement regarding a merger was not to be final until approved by this Court. This order has remained intact despite later attack, discussed below in ¶16, by defendants.

Class Action Determination

14. Achieving class action status was an important goal, since a single vehicle for obtaining injunctive relief against practices affecting every active player in the same manner was essential; and recovery by all class members of damages since the 1966-1967 season was unlikely, if possible at all, without a class suit. Unlike many, if not most, class actions in which the class certification issue is virtually conceded (usually contemporaneously with a settlement), the class issue here was hotly contested. The NBA defendants at every opportunity consistently and strenuously argued against certification of this suit as a class action, and instead sought to have the case held to be one brought on behalf of the named plaintiffs only or by the National Basketball Players Association (the "Players Association"). In the Spring of 1974, Petitioner moved for class certification and the NBA defendants launched a frontal attack on the class action allegations. Extensive briefs and affidavits were submitted by Petitioner on this matter, since denial of class status would have effectively precluded vindication of the rights of almost 500 players, both active and retired; would have severely damaged the opportunity to change the NBA's practices at one time in a uniform manner; and (as experience has shown in other cases) would have minimized or eliminated the possible monetary recovery by the class. The NBA defendants raised

every conceivable argument in opposition to the class certification and required Petitioner not only to substantiate the threshold requirements of Rule 23 of the Federal Rules of Civil Procedure, but also to rebut major questions regarding alleged conflicting interests among every conceivable group of players within the class.* Petitioner not only had to meet these issues, but further had to do so without the benefit of any prior sports or similar case in which a class action certification had been granted. Ultimately, however, but only following a lengthy hearing at which all the issues were aired, Petitioner was successful in obtaining certification of this class. As a result of Petitioner's effort to obtain this certification, 479 class members will be able to share, at no cost to them, in the substantial benefits described in Part II below. Such benefits accrue not only to the class, but also to all future NBA players in the form of elimination and significant modification of the challenged NBA intra-league practices.

ABA Cross-Claims and Counterclaims

15. In July 1974, the ABA and its teams filed "cross-claims" and "counterclaims" seeking an injunction and trebled damages against, inter alia, the named plaintiffs, the Players Association and Lawrence Fleisher, alleging that they violated both the National Labor Relations Act and the antitrust laws. Petitioner immediately acted to protect the class from this onslaught by moving for summary judgment dismissing such claims. After a hearing before this Court, for which Petitioner filed several affidavits and a memorandum of

* In addition, the NBA defendants sought to challenge Petitioner's right to represent the class -- a contention which the Court directly rejected in its opinion certifying the class by citing with approval Petitioner's efforts on behalf of the class. (389 F. Supp. 867,900 and n. 69)

law as to the host of issues raised, the ABA was forced to withdraw all of its charges.

Defendants' Motion for
Summary Judgment and Dismissal

16. Also in July 1974, by way of motions for summary judgment and dismissal, the NBA defendants and the ABA sought to attack the Complaint on the merits and to dissolve the previously issued preliminary injunction. Largely on the basis of labor law principles, they contended, inter alia, that the NLRB had exclusive or primary jurisdiction to hear the class claims; that the class did not have standing to sue; that the dispute involved mandatory subjects of collective bargaining; that the defendants' practices were protected from challenge by virtue of the so-called "labor exemption" from the antitrust laws; and that the Players Association was an indispensable party. Despite the vigorously-pressed arguments of both the NBA defendants and the ABA, which filed separate papers, and without the benefit of any direct precedent to support the players' opposition, Petitioner prevailed as to all of these novel and difficult questions. Petitioner's efforts involved the filing of voluminous briefs and affidavits and participating in another critical oral argument, which resulted in the Court's landmark opinion of February 14, 1975 upholding the class' federal antitrust claims in the face of defendants' omnibus attack. The Court's discussion of the merits of the antitrust claims, which Petitioner pressed in its papers and at the hearing, provided the NBA defendants with notice of the difficulty of their case and thus, the opinion provided a key impetus for ultimately reaching the settlement of this action. However, at the same time, it left open issues of fact, particularly in the collective bargaining area, which set the stage for the vast discovery program described below.

Pre-Trial Discovery

17. In addition to the extensive litigation on the merits, Petitioner also engaged in an extraordinarily broad program of discovery which, of necessity, was compressed into a period of a few months. Following the Court's opinion of February 1975, the Court in March ordered commencement of discovery by all parties -- the plaintiffs against the NBA defendants and the ABA, the NBA against plaintiffs and the ABA and NBA against each other.* More discovery took place in this case between April 1975 and January 31, 1976, than in most every other case (regardless of the duration of such other discovery) in the experience of the lawyer participants.

(a) Interrogatories -- Petitioner propounded 74 multipart interrogatories (containing hundreds of questions) to the NBA and each of its member teams in March 1975. Significantly, these interrogatories not only required the NBA and its teams to detail the history and operations of their practices relating to players, but also pinned down the NBA's theories and contentions concerning the need for the challenged practices and the facts concerning the alleged collective bargaining defense. In addition, Petitioner prepared responses to the two sets of interrogatories (32 multipart interrogatories) addressed by the NBA defendants to each of the fourteen named plaintiffs and the Players Association. (As indicated in ¶18(a) infra, Petitioner succeeded in overcoming the NBA defendants' numerous objections to plaintiffs' interrogatories, while many of our objections to defendants' interrogatories and answers were upheld by the Court.) Many hours were spent in this area of

* In February 1974, the ABA was required to assert all of its claims against the NBA defendants in the Robertson case, rather than in the Northern District of California, so that all antitrust issues involving professional basketball could be heard in one forum at the same time.

discovery resulting in crucial admissions by defendants as well as the discovery of the location and description of defendants' documents.

(b) Documents

(i) Document production, in terms of the sheer number of documents involved and the logistics of production, was extensive to say the least. Petitioner first reviewed many thousands of documents in the files of the Players Association to determine which documents were called for by the NBA's broad document demand, which documents were privileged, etc. and later arranged for production of the documents located in these files. Further, throughout the subsequent months of discovery, Petitioner reviewed and arranged for production of the continually generated Players Association documents. Petitioner also arranged for review and production in New York of responsive, non-privileged documents in the possession of each of the fourteen named plaintiffs as well as documents in the files of their present and former attorneys and representatives. Later, Petitioner managed the extraordinary task of collecting, reviewing and producing all of the thousands of documents in the possession of more than 70 additional class members who were scattered all over the country (and many of whom were travelling with their teams at the time) and their present and former attorneys and representatives who were also located in all parts of the country. Hundreds of hours were spent in an effort to properly comply with these discovery obligations.

(ii) In addition, Petitioner reviewed hundreds of thousands of documents produced pursuant to our demand from the files of the NBA, its attorneys, its member teams, the ABA and its teams and attorneys, and third party witnesses. In many instances, this review did not take place in New York City. Considerable amounts of time were spent reviewing files located across the country in many cities (such as Los Angeles, San Francisco and Indianapolis) often, of necessity, the night before a deposition was to be taken. And, the review was not limited merely to correspondence, records and newspapers: Petitioner won access to and reviewed thousands of pages of financial data, as well as depositions and record files from collateral lawsuits in which the NBA, ABA and their teams were parties.

(c) Depositions

The incredible amount of work involved in the discovery described above was multiplied in difficulty and time by the fact that a deposition program of vast proportions was simultaneously being conducted. The problems overcome by Petitioner in conducting just that deposition program could be the basis for a textbook on discovery.

In an effort to obtain the most complete record for attacking the restraints at issue and defending against the attacks by the NBA defendants, Petitioner took, defended and participated in depositions of over 125 people, covering over 200 deposition days, in no less than 20 different cities in the United States and Canada between April 1, 1975 and January 31, 1976.

(i) Depositions of NBA and ABA Representatives - Petitioner took and participated in the taking of over 40 depositions of defendant parties and their representatives across the United States. These included many representatives of NBA teams, officials of the NBA league office (former NBA Commissioner Walter Kennedy and Deputy Commissioner Simon Gourdine were deposed by Petitioner for a total of eight days) and five of the attorneys for the NBA who had participated in collective bargaining; Petitioner also participated in the many depositions of NBA representatives taken by counsel for the ABA. Petitioner further participated in the depositions taken of present and former ABA league and team representatives in an effort to discover facts, and the ABA's contentions, concerning the challenged practices. Further, since many of the above depositions could not be held in New York, Petitioner had to take numerous "road trips" often lasting a week and more in order to take all of these depositions. Preparing for and taking all of these depositions naturally involved considerable time, effort and expense.

(ii) Player Depositions - Petitioner, of course, did not merely take depositions. During the early stages of this discovery, Petitioner defended all 14 named plaintiffs at depositions taken by the NBA defendants. In addition, the NBA defendants took and Petitioner defended the depositions of approximately 70 class members during the basketball season. Petitioner was forced to spend innumerable hours trying to locate retired players and attempting to schedule their depositions and those of active players (and production of all their

documents) for the time and place most convenient to the class member, consistent with the needs of the Court and all counsel. As a result, Petitioner travelled to many locations scattered throughout the country, staying on the road for as long as sixteen consecutive days, and spending hundreds of hours defending the class members at their depositions.

(iii) Depositions of Third Party Witnesses - The NBA defendants also took the depositions of many third party witnesses, including individual players' agents and attorneys, as well as representatives of players associations in baseball, football and hockey. Petitioner attended each of these depositions (at locations ranging from San Francisco to Toronto), reviewed documents produced by the deponents and conducted cross-examination. In addition, defendants took and Petitioner defended the deposition of Lawrence Fleisher for over 12 days -- plumbing the depths of his knowledge of every conceivable fact concerning the issues from 1963 to date.

Discovery Motions

18. Not surprisingly, this extraordinarily broad and intensive discovery in a case which defendants fought at each step of the way spawned innumerable disputes concerning the rights and obligations of the various parties and their counsel. As a result, Petitioner frequently had to submit extensive briefs and affidavits and appear for hearings before this Court in an effort to force the NBA defendants to meet their discovery obligations and to clarify the discovery obligations of plaintiffs and the class. For example:

(a) In May and June 1975 Petitioner moved to compel defendants to comply with Petitioner's discovery demands, and further, opposed a motion by the NBA defendants to compel compliance with their discovery demands directed toward both named plaintiffs and every member of the class. Petitioner submitted memoranda and affidavits exceeding 180 pages in length in connection with these motions and further participated in the lengthy hearings thereon. Petitioner's Rule 37 motions were resolved by the NBA defendants providing more satisfactory responses to plaintiffs' interrogatories and demands for documents. In addition, Petitioner successfully resisted most of the NBA defendants' charges and demands concerning discovery from named plaintiffs and the Players Association, including attempts to discover financial data. Finally, discovery from the class was sharply restricted as a result of Petitioner's objections to wholesale discovery of the class. In July the Court limited the NBA to 75 class member depositions; limited the permissible scope of questioning at those depositions; and adopted Petitioner's contention that class members who could not comply with discovery would not be subject to Rule 37 sanctions.

(b) In September 1975, faced with the prospect of 75 more player depositions and a dozen or more third-party witnesses' depositions at locations throughout the country, Petitioner moved pursuant to Federal Rule 26 and Local Civil Rule 5(a) for prepayment by defendants of plaintiffs' cost and attorneys' fees to be incurred in connection with many of these depositions. Oral argument on this motion was held on November 3, 1975. As a result of this motion and despite the strong opposition of the NBA, the Court allowed such fees and costs for certain

of the non-player depositions; in addition, the NBA agreed to conduct many of the depositions in New York at a time when the player-deponent's team came here to play, thereby resulting in a substantial benefit to the class in terms of convenience and monetary savings.

(c) On November 6, 1975, Petitioner participated in yet another hearing before this Court, at which time the Court redefined the proper scope of the requirements for compliance with defendants' discovery demands directed toward the individual class members who were to be deposed.

(d) At still another hearing before this Court in early December 1975, the NBA defendants attempted to assert that plaintiffs and class members had failed to comply with a host of defendants' discovery demands. Petitioner successfully opposed such ad hoc arguments and the Court required the NBA defendants to make a formal motion setting forth their specific complaints and allegations.

(e) In response to the Court's direction, on January 2, 1976, the NBA filed an omnibus Rule 37 motion, attacking plaintiffs', class members' and Petitioner's allegedly inadequate compliance with the defendants' discovery demands. The scope of the charges ranged from the alleged inexcusable failure of individual players to produce documents to Petitioner's alleged improper directions to players not to answer questions posed by the NBA at depositions. The NBA also sought to eliminate Judge Tenney's earlier non-communication order. Petitioner had only a few days available in which to respond and for yet another time -- not the first or last -- worked around the clock. Petitioner reviewed the

transcripts of every player deposition, reconfirmed information previously supplied by nearly every class member and named plaintiff who had been subjected to discovery, and answered each of the NBA's allegations both in a 71 page affidavit (to which were annexed 33 multipart exhibits) and by oral argument at a hearing before the Court which lasted the entire day of January 8, 1976.* At that hearing, the Court first found that Petitioner and the class had done all that could be asked in complying with the herculean task of deposition and document discovery which they had faced. The Court next held, over the persistent and vigorous argument of the NBA's counsel, that Petitioner had been entirely correct in every one of its objections and directions to plaintiffs and class members not to answer hundreds of improper individual questions, and in some cases entire areas of questioning at their depositions. Finally, the Court did not eliminate or modify the non-communication order.

(f) It further must be noted that at every opportunity the NBA defendants sought to have the discovery schedule extended to permit depositions and document production to take place at less breakneck speed and to postpone the trial date which the Court had set for June 1, 1976. Petitioner successfully opposed all such efforts -- despite the severe strain which the extensive document discovery combined with months of two-to-four depositions per day placed on the attorneys involved -- because of our desire to meet the scheduled June 1, 1976 trial date at all costs and to preclude any delay which might forestall the relief which the class might obtain.

* At that hearing, the Court specifically commended Petitioner for the caliber of its work in responding to this motion. Transcript of Hearing of January 8, 1976, p. 49.

Amendment of the Complaint

19. Petitioner continued its effort to advance the class' interests as fully and as carefully as possible by undertaking the time-consuming and painstaking task of amending the Complaint for a second time in October 1975, to include newly discovered or recently imposed restraints and again to name new and successor NBA teams as defendants, and to make other changes therein. In April 1974, Petitioner had first amended the original complaint, inter alia, to add new NBA teams as parties and to redefine the class action allegations. While numerous discussions were had with counsel for the NBA defendants in an effort to accomplish this second amendment by agreement and stipulation, NBA counsel refused to enter into any such stipulations. Petitioner consequently filed a motion to amend the complaint which was strenuously opposed by the NBA defendants in answering papers and at a hearing before this Court; but Petitioner was successful and the Court permitted the amendment.

Related Proceedings

20. In July 1975, the NBA sought to accomplish an end-run around the Court's preliminary rejection of its collective bargaining defense. At that time, the NBA proposed as subjects for collective bargaining the very intra-league practices which were attacked in the Complaint. When the Players Association refused to bargain about any of these matters on the ground that these were issues for the Court to decide, the NBA filed an unfair labor practice charge with the National Labor Relations Board, alleging a refusal to negotiate about mandatory subjects of collective bargaining. Seeking to keep intact the Court's jurisdiction, Petitioner immediately prepared an affidavit and filed extensive memoranda of law in opposition to the charge with the NLRB. To date, the NLRB has not issued a complaint or ordered the Players Association to bargain about these issues. Petitioner thus

avoided the prejudice to the class which might have resulted from an NLRB order directing collective bargaining about the very intra-league practices at issue before the Court and declaring them to be mandatory subjects of collective bargaining.

21. Petitioner further has participated successfully in various other proceedings related to Robertson v. NBA in an effort to protect the class' interests and to preclude even the slightest harm or prejudice thereto. Among these were the ABA Players Association's unsuccessful attempt to intervene in and delay this case in December 1975, and various motions heard in the companion case thereafter brought by the ABA Players Association.

C. Settlement Discussions

22. At various times between 1971 and 1975 settlement discussions were held. These discussions with NBA representatives proved fruitless, despite substantial time and effort expended in that effort, due to defendants' refusal to make meaningful settlement offers.

23. However, in January and February 1976 settlement discussions again were undertaken. Petitioner, along with Lawrence Fleisher and several named plaintiffs and class members, met with representatives of the NBA defendants in New York and in Philadelphia. After days of intensive around the clock negotiations, an agreement in principle was reached in early February. In these negotiations, discussion focused on two major areas: elimination and modification of the challenged NBA practices and a settlement fund to be paid to the class. In order to achieve the largest amount of direct monetary benefit for the class from the NBA defendants, Petitioner agreed to limit its application

for attorneys' fees to its normal hourly charges and not to seek, even though appropriate under the applicable cases, fees in excess of such charges. The broad concepts of the proposed settlement were explained to this Court shortly thereafter in February.

24. The settlement drafting process was far from complete, however. This settlement involved much more than dismissing a lawsuit in exchange for the payment of dollars in settlement. The heart of the NBA's player acquisition and retention practices was being eliminated or changed, and such changes had to be clearly spelled out in the Settlement Agreement and related Exhibits. Hence, over the next ten weeks, scores of drafting and negotiation meetings often lasting all day (and as late as 4:30 a.m.) were held between Petitioner and counsel for the NBA, at times together with the NBA's negotiating committee and Lawrence Fleisher. The interests of the class were fully protected during this period; indeed, on more than one occasion, it appeared that the trial would have to be held after all, when class rights were threatened to be adversely affected. It was not until April 29, after hundreds of hours of negotiating and drafting the Settlement Agreement and related Exhibits, that the outstanding issues finally were resolved in writing.

II

BENEFITS OBTAINED FOR THE CLASS

25. As a result of Petitioner's efforts, the plaintiffs and class members realized significant benefits during the pendency of this action even before obtaining the substantial benefits provided by the Settlement Agreement.

(a) The initial benefit to the class from this suit resulted from Petitioner's successful efforts to maintain inter-league competition so long as players' intra-league rights went unprotected. This financial benefit has accrued to every class member since the initial temporary restraining order against an NBA-ABA merger was obtained in April 1970. As demonstrated by the experience of professional football, salaries drop precipitously (and certainly do not increase) when the only competing elements in the market for players' services merge and when the surviving league continues its restraints on players' freedom to negotiate. By forestalling the merger until the NBA's intra-league practices were eliminated or modified in this Settlement Agreement, this salary decrease was prevented. Indeed, Petitioner's success in obtaining the injunction actually led to a dramatic increase in salaries, since salary competition from ABA teams steadily increased since 1970. Even after allowing for inflation, Petitioner conservatively estimates that through the end of this season the entire class has benefitted by $10 million at the barest minimum as a result of continued inter-league competition. In 1969-1970, the season in which this suit commenced, the median salary in the NBA was approximately $35,000; by 1971-1972 it was $55,000; and today it is approximately $100,000.

(b) A related benefit was the maintenance of competition for player services between the two leagues which resulted from Petitioner's contempt motion described in ¶11, supra. As a result of this motion and Judge Tenney's opinion thereon, the leagues were precluded from effecting an inter-league restraint which, as a practical matter, would have effectively precluded movement (or the potential for movement) between the leagues by players with a consequent negative impact on class members' salaries.

(c) Another significant interim benefit to the class was the NBA's modification of one of its intra-league restraints, the reserve clause, during the pendency and as a direct result of this action. In an unsuccessful effort to overcome Congressional opposition to the merger (generated to a great degree by Petitioner's activities in Washington on behalf of the class) and to settle this action, the NBA in August 1971 decided upon and in September 1971 implemented a change in the Uniform Player Contract, replacing the perpetual reserve clause then in effect with a one-year option clause. This change permitted increased freedom of movement and negotiating leverage for all NBA players.

(d) The benefits to the class of Petitioner's efforts in obtaining class certification and prevailing on the class discovery question also are readily apparent. The expenditure of hundreds of thousands of dollars which would have been incurred in attempting to litigate these issues in separate actions or in complying with discovery demanded of each class member (e.g., defending an additional 400 depositions) was avoided. The delay of trial which necessarily would have been occasioned by the individual discovery of all class members sought by the NBA also was avoided, thus maintaining pressure on the NBA defendants to settle. Finally, the discovery burdens upon most class members were eliminated entirely since 85 per cent of them were not subjected to any discovery, while at the same time the burden on those class members who were deposed was eased substantially by the Court's restrictions upon the scope of inquiry.

The Settlement Agreement

26. The most direct present and future benefits to plaintiffs and the class, of course, are provided by the Settlement Agreement itself, which is structured so as to provide the maximum benefit to each class member depending upon his particular situation. The settlement provides two categories of benefit to the class -- participation in the Settlement Fund and elimination and modification of NBA practices which will mandate increased competition for players' services from this date forward. Each aspect of the settlement was passed upon by a group of players -- some active and some retired, both named plaintiffs and class members -- before it was agreed upon by Petitioner. Moreover, on March 2, 1976 under Court supervision, a letter outlining the settlement in principle was mailed to the class members, none of whom has made any adverse comment to date.

(a) Settlement Fund -- Prior attempts by the NBA defendants to settle involved the offer of nothing in terms of a settlement fund. It was only by Petitioner's years of persistent efforts to effect a settlement on terms most favorable to the class that the Settlement Fund was obtained in the amount of $4.3 million. This sum is to be divided among 479 class members. Because competition for players' services has increased steadily since 1966-1967, the settlement formula provides that class members who played in the earlier years of the damage period (during which salaries were much lower and competition was at its nadir) will receive a greater share of the fund than those who played in later years. This distribution further is most equitable because these older players are either retired or nearing the end of their careers, and thus will not realize the benefits of the changes of NBA practices

which younger players will enjoy. Each class member will share in the cash settlement and, depending on the years in which he played, can receive up to $30,000. Of course, such a large recovery by individual class members is quite rare in class actions.

(b) Modification and Elimination of Intra-League Restraints -- As a result of Petitioner's efforts, the settlement will result in dramatic changes in the intra-league practices of the NBA. Unlike the situation that exists in other sports, NBA basketball will be completely restructured so as to recognize and protect players' economic rights. The active class members not only will share in the Settlement Fund, but also will have the opportunity to greatly increase their future salaries because in providing for immediate elimination of the reserve clause and a phase-out of the reserve compensation plan the settlement immeasurably increases the player's negotiating posture. Plaintiffs agreed to a phase-out of this latter practice rather than its immediate elimination, because defendants in any event would likely have maintained the practice during the course of trial and appeals. Players will no longer be bound by the uniformly imposed reserve clause, even if it appears in their present contracts, and thus will be able to bargain with any team for a salary reflecting their true value immediately upon expiration of their contracts. Future players will benefit greatly by the drastic reduction in the duration of an NBA team's draft rights and the seminal changes made in the hardship draft rules. Further, the Settlement Agreement provides that this Court shall retain jurisdiction over the case to assure that the NBA complies with its agreement not to reimpose the challenged practices, and creates a procedure for hearing disputes on the enforcement

of the Settlement Agreement before a Special Master. Thus, the class will not be subjected to differing interpretations of a set of rules that impact all players identically.

(c) Attorneys' Fees and Costs -- Furthermore, the $4.3 million settlement in no way will be decreased by the allowance of attorneys' fees and costs sought in this Application. Rather, the NBA defendants will bear the entire burden of such fees and costs in addition to paying the $4.3 million Settlement Fund. The fairness of the attorneys' fees here cannot be questioned. First, the total amount of such fees to date is about 19% of the Settlement Fund going to the class, and no more than three or four per cent of the total direct monetary benefit which has accrued to the class over the course of this litigation. Such fees represent but an infinitesimal fraction of a per cent when the future benefits to be derived by the class from the changes in the NBA's practices are also considered. Second, the request here is limited to fees based on the Petitioner's ordinary hourly rates applied at the time the legal work was performed for the class. Petitioner seeks no premium despite the fact that as a matter of law, a class counsel which has skillfully and diligently prosecuted an action and has obtained either such a favorable settlement or such substantial benefits for the class during the course of the litigation (much less both, as here) is entitled to a sum well in excess of its normal rates. It should be emphasized that Petitioner has been sole counsel of record for all plaintiffs and the entire class to date* and no attorneys have intervened in the action or in any way aided Petitioner's six-year prosecution of this case. As noted, no prior private or government action, much less any judicial precedent, existed before this action to aid Petitioner.

* One player, Chester Walker moved last month to displace Petitioner as his counsel. That motion has not yet been determined.

PETITIONER'S TIME CHARGES INVOLVED

27. The following is a breakdown of the time spent by Petitioner's attorneys on the Robertson case issues. It must be noted that the amount of dollars reflects the attorneys' billing rate as of the time work was performed and not the higher figure that would be derived by using the current billing rate.

Attorney	Total Hours	Fee
Peter Gruenberger	2,726.95	$269,319.91
James W. Quinn	2,389.45	149,480.50
Irwin H. Warren	1,933.85	82,598.50
Kenneth Lemberger	429.90	23,644.50
Robert G. Sugarman	378.00	31,705.00
Ira M. Millstein	317.25	46,387.50
Joel B. Harris	315.85	21,453.00
Jeffrey Frackman	314.92	15,746.00
Stephen E. Jacobs	198.50	21,835.00
Mark A. Jacoby	184.50	15,427.50
Robert A. Weiner	173.40	9,537.00
Henry J. Tashman	122.20	6,110.00
Peter D. Standish	42.90	3,646.50
Joseph H. Weiss	29.50	1,622.50
Gregory M. Perry	24.50	1,715.00
A. Paul Victor	23.25	2,557.50
Jane Levine	20.50	820.00
Martin D. Ginsburg	13.50	2,025.00
Alan B. Miller	11.50	1,150.00
Michael Emont	9.00	450.00
Irving Scher	7.20	792.00

Attorney	Total Hours	Fee
Alan R. Johnson	7.00	525.00
Lynn H. Schafran	7.00	315.00
Freda Bein	6.00	270.00
William Maderer	5.50	275.00
Thomas C. Culliran	5.03	176.05
Jeffrey N. Rich	4.60	299.00
Arthur F. Abelman	4.42	309.40
Charles Seligson	2.00	300.00
Marshal C. Berger	1.50	97.50
Hillel Raymon	1.30	58.50
Janet M. Meiburger	1.00	45.00
Steven J. Shore	.90	54.00
Nancy L. Buc	.80	52.00
Donald Moss	.58	23.20
Joseph W. Gelb	.50	45.00
Martin B. Amdur	.40	34.00
Andrew Levine	.30	15.00

28. Significantly, no attorneys' fees are sought for the work of Lawrence Fleisher, Esq. Mr. Fleisher has devoted thousands of hours as a lawyer on behalf of the class in this case on tasks including drafting, counseling, negotiating the settlement, organizing the players' efforts in Congress, and helping to arrange for depositions of (and accommodations for) players, to name just a few; and all of this in addition to his long and arduous testimony. Despite his clear right to seek a substantial award of attorneys' fees, he has made no such request so that the players will receive maximum monetary benefits.

29. Consistent with Petitioner's efforts to accomplish its tasks with the least possible expense, legal assistants ("paralegals") and summer law clerks were utilized whenever possible. For example, paralegals were used to assist in document discovery and production, and as the litigation progressed and the volume of work increased, more paralegals were assigned to that function and to assist attorneys in preparation for depositions and to perform the arduous task of digesting the tens of thousands of pages of player, owner and league representative depositions. As a result of this judicious use of legal assistants, attorneys' time was spent on duties which only an attorney can perform. The following is a summary of the time which each paralegal and summer law clerk spent on this case:

Summer Law Clerks and Paralegals	Total Hours	Fee
Sandra Siegel	1,513.40	30,268.00
Suzanne Stultz	1,199.40	23,988.00
Elizabeth Stark	283.20	5,664.00
Pam Furer	258.50	5,170.00
Ellen Odoner	222.40	5,560.00
Suellen Raiff	135.70	2,276.50
R. L. Grayman	87.20	2,180.00
J. R. Fialkoff	45.50	1,137.50
Tova Cavell	26.50	530.00
Henry Doyle	17.60	352.00
Ruth Lese	12.00	240.00
Vincent Whalen	10.20	204.00
J. Davidson	6.50	162.50
H. R. Reiss	4.00	100.00

Summer Law Clerks and Paralegals	Total Hours	Fee
Jane Singer	3.50	70.00
Albert Pacelli	1.70	34.00
Michael Brown	1.50	52.50
J. Ratner	1.33	33.25
E. Rosenberg	.50	12.50

30. Thus the aggregate number of Petitioner's billable hours is 13,546.08, which includes 9,715.45 attorney hours and 3,830.63 paralegal and summer law clerk hours. The total fees are $788,951.31, and the average rate per billable hour for attorneys is $73.00 and for paralegals and summer law clerks is $20.00.

COSTS AND EXPENSES

31. As of March 31, 1976, out-of-pocket costs and disbursements actually expended on behalf of the class since the inception of this action aggregated $122,701.05. These costs were necessitated in large measure by the frequent travel of many persons, numerous depositions and hearing transcripts and the voluminous document reproduction undertaken since 1970. The costs were kept at a minimum whenever possible. It is unnecessary to emphasize that the class members in no way could have maintained separate litigations at this huge cost.

PAYMENT SCHEDULE OF FEES AND EXPENSES

32. As noted above, Petitioner's attorneys' fees incurred through April 15, 1976 total $788,951.31, and disbursements actually expended for the class through March 31, 1976

total $122,701.05. In addition, reimbursement is sought for $41,021.77 of attorneys' fees which were billed by and actually paid to Washington counsel who are noted above. Thus, the total fees applied for are $829,973.08, plus such disbursements.* As set forth in the Settlement Agreement such amounts and all amounts hereafter incurred until the Settlement is finally approved (including any appeals) will be paid by the NBA into escrow as set forth below. The obligation to pay such fees and expenses is unsecured, unlike the obligation to pay the Settlement Fund to the class which is fully secured by the proceeds from the NBA's network television contracts.

- $200,000 within ten days following execution of the Settlement Agreement
- $400,000 on November 10, 1976
- $300,000 on January 10, 1977
- the balance on April 11, 1977 if the Settlement is finally approved by that date;
- the additional balance, if any, on July 10, 1977 or ten days after whichever occurs first.

CONCLUSION

33. In light of the substantial benefits which have been obtained for the class as a result of Petitioner's efforts Petitioner respectfully submits that the fees herein requested unquestionably are fair and reasonable, and the Court should approve the payment by the NBA of such fees, costs and disbursements as noted above.

Peter Gruenberger
PETER GRUENBERGER

Sworn to before me this
20th day of April, 1976

James W. Quinn
Notary Public

Notary Public, State of New York
Qualified in Nassau County
Commission Expires March 30, 1978

* Those class members who have paid special assessments towards Petitioner's counsel fees (a maximum of $900 of assessments were paid by some class members) will receive reimbursement therefor from Petitioner out of the fees paid by the settling defendants, as approved by the Court.

1206

Exhibit B

1207

The New York Times SPORTS

TUESDAY, FEBRUARY 3, 1976

N.B.A., Players Reach Tentative Pact on Suit

By SAM GOLDAPER

Special to The New York Times

PHILADELPHIA, Feb. 2 — The National Basketball Association and its players reached a tentative agreement today for an out-of-court settlement of the Oscar Robertson suit.

The N.B.A. Players Association will meeet tomorrow with Larry Fleisher, its general counsel, before the league's 26th annual All-Star game to vote approval of the major aspects of the pact.

The class action suit was instituted in 1970 by Robertson, then a player for the Milwaukee Bucks, on behalf of all the players. It contends that the common draft, the option clause and the N.B.A. equivalent of football's Rozelle rule, which compensates a team a player has left to sign with another, violate the antitrust laws.

The suit was scheduled to go to trial on June 1 before Federal Judge Robert L. Carter in New York. Peter Gruenberger, the lawyer for the players, and David Stern the league lawyer, have notified Judge Carter of the progress that had been made today.

After almost a month of negotiations between committees of owners and players, common ground for the settlement of the sticky issues of compensation and the draft have been found.

Instead of the compensation clause, which owners had insisted upon, there has been substituted the right of first refusal, starting in 1980.

This means that at the end of a player's contract he has the option to deal with any club in the league. His old club then has the right to match any offer of another team in order to keep the player.

Meanwhile, the option clause in present player contracts—which in effect have bound a player to his original clubs for a year after his contract expires—will be deleted from N.B.A. pacts after this season.

As for the college draft, a player must be signed by the team that drafted him within one year or he returns to the draft pool. Previously, the rights to a player remained the property of the team that had drafted him.

A Long Meeting

In recent years the courts and labor arbitrators have ruled that club owners do not own the rights to players they have drafted and never signed, or players whose contracts have expired.

After almost seven hours of owner meetings today Larry O'Brien, the N.B.A. commissioner, said: "The board of governors approved the interim report from its advisory committee concerning the on-going negotiations with the players of the N.B.A. The report indicated that substantial progress had been made with the respect to the so-called Robertson issues."

When the organization meeting was asked if this meant an out-of-court settlement had been reached, he said, "Those who know me think I'm a pessimist by nature, but as I sit here today I am an optimist."

Negotiations between a five-man advisory committee of owners appointed by O'Brien and four current players, plus Robertson and Fleischer, began on Jan. 6 in New York.

The owners' group included Mike Burke, president of the Knicks; William Wirtz of the Chicago Bulls, Richard Bloch of the Phoenix Suns, Abe Pollin of the Washington Bullets and William Alverson of the Milwaukee Bucks. The representatives of the players were Paul Silas of the Boston Celtics, president of the players Association; John Havlicek of the Celtics, the vice president; Jeff Mullins of the Golden State Warriors and Jim McMillan of the Buffalo Braves.

'All Issues Settled'

"We have reached enough of an agreement for me to go to the players tomorrow for approval," said Fleisher. "No issues involving the Robertson suit remain outstanding. They have all been settled."

In 1974, Herman Sarkowsky, then an owner of the Portland Trail Blazers, represented a group of owners and reached an agreement with a group of player representatives that would have eliminated the option clause and replaced it with the right of first refusal. The owners never acted on her agreement.

This time, however, the five-man committee was persistent. After agreeing among themselves, they went out and sold the other owners on the settlement.

Burke and Pollin met with the Eastern Conference franchise owners; Alverson and Woods met with those in the Midwest and Bloch with the West Coast owners.

Trial Not Wanted

Some of the members of the advisory group arrived earlier than most owners yesterday and met into the early hours of the morning with Fleisher and Gruenberger.

"Neither side wanted to go to trial with the case," said Burke, one of the prime movers for the out-of-court settlement. "Common sense dictated that we establish a sensible framework within which all of us in basketball can work successfully."

The advisory committee will continue to work with the players in an effort to reach an agreement for a contract to replace the one that expired last June 1. When that is done, the lawyers for both sides would then petition Judge Carter for the dismissal of the Robertson suit.

When that is done, the N.B.A. and the American Basketball Association will also be free to discuss a possible merger, should they wish to. They have been unable to do so without the players' involvement as long as the Oscar Robertson suit remained pending.

BEST COPY AVAILABLE

NEW YORK NEWS
February 4, 1976

1208

A Basket of Goodies —From NBA to Players

By Bill Verigan

Philadelphia, Feb. 3—The NBA owners and players settled their five-year dispute over the Oscar Robertson case out of court today with a stunning agreement that virtually swept away the option clause and reserve clause and limited the player draft.

By capitaulating on every issue, including a $5 million cash settlement, the owners appeared to gain mainly the opportunity to merge with the ABA, a move that would push down player salaries by eliminating the competition. However, NBA president Larry O'Brien dashed merger speculation by stating: "The board of governors of the NBA is unanimously opposed to merger of the NBA with any other basketball league, and all representatives of the NBA are instructed to take no action or make any statement inconsistent with this policy."

While the players treated the settlement like a major victory, smoking cigars at the announcement, several owners still adamantly opposed it.

Bradley Happy

The agreement affects about 500 players, anyone active in the NBA during or since 1970. If any of them dissent, they will be given a hearing, "and free psychiatric care," added Bill Bradley. The Knick player rep was only voicing the players' satisfaction with the deal.

Paul Silas of the Celtics said, "I'm delighted. Players will benefit from this agreement for the next decade."

Player Association counsel Larry Fleisher called it "an equitable, workable system, an historic change in pro basketball." He said the agreement was possible "because the owners would have to be totally foolish not to see the handwriting on the wall, the resolve of our players in fighting the case and perhaps Judge Carter's open court admonitions to settle."

While concessions to the owners appeared minimal, O'Brien said, "We established a structure for the next decade under which all parties might live and prosper." He simply seemed relieved to have the Robertson suit finished.

Jerry Colangelo of Phoenix summed it up for the owners by saying, "Some might think it was unfavorable but it was the best we could get. We could have made the same settlement several years ago, and what was the use of waiting several more years?"

Mike Burke, president of the Knicks and one of the engineers in the settlement, admitted, "There was opposition to some of the threats, but they were part of the entire fabric."

Point by point, here is how the agreement breaks down:

- The option clause will be eliminated at the end of this season. In the past a player was bound to his team one year — the option year — beyond the term of his contract.
- Rookies who sign a one-year contract will still be subject to an option year, but they can get around that easily enough by signing for two or more seasons.
- A "first refusal" rule will be substituted for the present compensation system, basketball's answer to pro football's Rozelle Rule.

Presently, a team that signed a player who had played out his option had to compensate his former team. Compensation has usually been given in players as determined by the commissioner.

Under the new setup, the player's original team will be given a "first refusal" — the chance to match an offer from another team. There will be no compensation if the original team does not match the offer and the player goes elsewhere.

The "first refusal" rule will go into effect in 1980, giving the owners time to adjust to the situation.

- If a college player is unsigned within one year by the team that drafts him, he is eligible to be drafted by another team. If he is still unsigned after two years, he becomes a free agent and can negotiate with any team.
- The owners will pay the players' lawyers fees.
- The owners will make a $5 million cash settlement, which will be distributed among nearly 500 players according to the damages they suffered.

The agreement will be in effect 10 years.

All that is needed to implement the agreement appears to be court approval from Judge Robert Carter, (Federal Court-District of New York), who will examine the details on Friday.

A slight misunderstanding appeared to exist between owners and players over when the agreement will actually go into effect, however. The owners and O'Brien said it will not be effective until an entire collective bargaining agreement is completed, but Fleisher said it will go into effect immediately after court approval.

At any rate, collective bargaining over such issues as the pension and local money is expected to be settled quickly now that the Robertson case is out of the way.

The Philadelphia Inquirer
Wednesday, February 4, 1976

NBA option issue resolved by out-of-court settlement

By Bill Livingston
Inquirer Staff Writer

The National Basketball Association Players Association yesterday accepted the compromise out-of-court settlement of the Oscar Robertson lawsuit challenging the legal structure of the sport.

Under the agreement:

• The option clause as it is presently constituted will disappear from NBA contracts, said Players Association counsel Larry Fleisher.

The option clause, which binds a player to one team, will be abolished after the 1976-77 season. In its place will be "right of first refusal," in which a player can sell his services to a new team but must submit that team's best offer to his old club. If the original team matches the offer, he must stay with it.

This was a surprising development since some owners were known to have been opposed on the grounds that such an arrangement would favor the richest teams, such as New York or Los Angeles.

• There will be no compensation for a team losing a player. Previously, if a player jumped to another team, the NBA commissioner dictated compensation for the first team.

• The college draft will be modified. Instead of the current drafting system—which gives a team negotiating rights to a player forever—a player will be able to refuse the offer of the team that drafts him and revert back to the drafting pool after one year. After a second such refusal, he becomes free to deal with any team.

The compromise on the draft is effective immediately; the option change after 1976-77, and the compensation change for the 1980-81 season.

Robertson, a former All-Star guard with Cincinati and Milwaukee, filed the suit on behalf of all the players of the NBA in 1970. The legal action sought to give players greater freedom of movement by challenging the option clause, the compensation arrangement and the player draft.

Robertson's suit had effectively blocked any chances of a merger that all ABA clubs had been seeking. Three ABA clubs — Baltimore, Utah and San Diego — have already folded this season. A fourth team, the Virginia Squires, is reportedly in danger of folding.

Fleisher said the agreement will be presented to the players for a vote, then turned over to a federal judge in New York for final approval.

The settlement was widely viewed as a chance for a possible merger with the struggling American Basketball Association.

Paul Silas, president of the NBA Players Association, said, "We left the doors open for a merger. We welcome competition. If they (the ABA) want their own league, fine. If they want to merge, fine. We took off all the restraints."

However, the draft modification is not retroactive. NBA teams will still own negotiating rights to players in the ABA. It was that system that eventually brought, for example, George McGinnis to the 76ers.

Sixer General Manager Pat Williams, contacted after the announcement, said, "There were no merger thoughts or discussions at all (in the owners' meeting Monday). The league (NBA) is in the position where there's no reason to send up smoke signals or little flags of merger. We hear Virginia (of the ABA) may go under tonight, by Friday at the latest.

"For example, the New Orleans Jazz used a first-round pick (in a special NBA draft) to take Moses Malone (of the ABA Spirits of St. Louis). Los Angeles used a first-round pick to take Mark Olberding (of San Antonio). For New Orleans to just wink at those picks, no way. For Atlanta to say to David Thompson, 'You just stay in Denver,' no way."

In Atlanta, Prentiss Yancey, general counsel for the ABA Players Association, said, "I'm very concerned about the compromise concerning draft rights. The issue of the draft rights affects the ABA more than the NBA."

Yancey said the ABA players have filed a separate suit alleging that the NBA retention of draft rights violates antitrust laws. It is still pending.

The NBA reportedly has been conducting secret meetings to explore the possibility of the NBA incorporating ABA teams in Kentucky, Indiana, Denver and New York.

The official NBA stance, however was to unanimously adopt a resolution opposed to merger.

"Representatives of the NBA have been instructed to take no action or make any statements inconsistent with this policy," said Commissioner Larry O'Brien.

1209

Chicago Tribune
Wednesday, February 4, 1976

Owners, players make peace in NBA

By Bob Logan
Chicago Tribune Press Service

PHILADELPHIA—The National Basketball Association owners opened the door for a merger Tuesday in a landmark agreement with their players, then slammed it in the face of the stunned American Basketball Association.

A day of far-reaching decisions which will change the course of all pro sports began with the NBA Players' Association gleefully announcing the terms of a 10-year deal giving them all they had sought—and more.

It was such an unconditional surrender by the owners that dazed listeners figured it must have been signed on the deck of the U.S.S. Missouri.

ANOTHER BOMBSHELL dropped a few hours later when Commissioner Larry O'Brien, confirming the agreement, announced that the league had decided to shun merger, even though the players' long fight against it ended with Tuesday's settlement.

Thus, after committing itself to an outlay of some $4 million to buy off its athletes, the NBA told the world it was ready to spend still more in a financial fight to the finish with the ABA. They were betting that the other league would sink in a sea of debt and allow players like Artis Gilmore [whose rights belong to the Bulls] to be recycled.

"The Board of Governors of the NBA is unanimously opposed to merger with any other basketball league," O'Brien said, quoting the text of a resolution passed here Tuesday.

THE SETTLEMENT, described by the commissioner as "give-and-take," was labeled by a dissenting NBA owner as "us giving and the players taking." Lawyers from both sides will seek approval Friday from Federal Judge Robert Carter, ending the players' antitrust lawsuit against the league [the so-called "Oscar Robertson case"].

The owners gave ground in every area of the so-called "freedom issue," besides picking up the tab for the lawyers [$1 million] and paying off the 500 athletes who were plaintiffs in the class action suit—another $3 million worth. The college draft option clause and compensation procedures of the NBA were overhauled drastically in the players' favor, with permanent guarantees.

IN A NUTSHELL, the setup provides:

- Any player drafted from now on who is not signed goes back into the draft the following year. If still unsigned after a second year, he becomes a free agent, available to the highest bidder.
- Effective immediately, all one-year rookie contracts will contain an additional year's option. Starting in 1976-77, the option clause, which binds the player for another year when his contract ends, will be eliminated [unless both player and club agree to keep it in force].
- The present compensation system [the NBA's version of the "Rozelle Rule," which provides that a team signing a free agent after his option year must compensate his former club] will remain in effect through 1980, when "first refusal" will replace it. Under that plan, Team A is given a chance to match Team B's salary offer to one of A's players whose contract has expired. If Team A agrees to match it, the player must stay with his club; if not, he can go elsewhere.

THAT'S THE FINAL step in what Larry Fleisher, the brilliant director of the NBA Players' Association, termed a "phase-in agreement" which ends in 1986. He called it "something we can live with," while others more accurately labeled Fleisher's coup a smashing victory for the athletes, who now have their cake and get paid for eating it.

Along with recent court decisions, Tuesday's developments clearly spell doom for football's Rozelle Rule and similar player restraints in other sports.

Fleisher and O'Brien moved quietly and effectively to prevent the chaos which might have resulted from a less ironclad settlement, though the pressure of an impending antitrust trial forced the NBA to give up more than it wanted to.

THE $3 MILLION ransom goes to all NBA players active when the Robertson case entered Carter's Manhattan Federal Court in 1970. The statute of limitations stretches back to 1966, so the court will supervise payments to them for "damages" they suffered over that stand.

"We're delighted," said Fleisher. "The phase-in was agreed on to prevent a three- to five-year court battle. We know the owners can operate just like any other business, without antitrust violations.

"You have to be totally foolish not to read the handwriting on the wall, especially after Judge Carter told the owners the book would be thrown at them if they didn't settle. The players were determined to see it through after all the time and effort we've expended, even if we had to camp on the courthouse steps."

NOT EVERYBODY agreed with O'Brien's rosy summation that "We have taken a giant step eliminating horrendous litigation."

Outspoken Owner Paul Snyder of Buffalo, dissenting forcefully, termed it "a lousy deal, L-O-U-S-Y. The worst deal in the history of sports.

"It invites tampering. Agents should have a field day. We definitely were the losers, creating competition among ourselves. From now, on, the ABA will be an easier opponent than each other.

"The mistaken thinking was that the cost of settling would be less painful than going through with the court action. I don't agree."

BUT O'BRIEN, who has covered a lot of ground in resolving the deep split between players and owners since taking office eight months ago, had the votes and the prestige to swing it. He sent a five-man advisory committee, including Bill Wirtz of the Bulls, around the league to sell reluctant owners on the settlement, and was elated at the outcome.

"What we have accomplished here is a structure for NBA growth and progress in the next decade," the commissioner said in a burst of New Frontier dialog. "Our television committee is meeting now with CBS on a new long-term contract and those negotiations look promising.

"This has to be a good-faith agreement," he said when the possibility of collusion by NBA clubs to keep salaries down was raised. "I believe it will work."

"THE OVERALL collective bargaining agreement with the players [whose three-year contract with the owners ended last June] still must be finalized. That's basically a laundry list of pension terms, meal money, and so on.

"There's no machinery yet for resolving disputes in the new system. We'll let the lawyers work them out. I have to be impressed with what's happened."

And the ABA? "NBA clubs probably will retain some rights to those players" [now in the ABA], said lawyer David Stern.

Obviously, both the players, contentedly smoking Red Auerbach-model victory cigars, and their bosses would be satisfied to see the rival circuit die—though for different reasons.

1211

Exhibit C

1212

(212) 541-7118

NATIONAL BASKETBALL PLAYERS ASSOCIATION

15 COLUMBUS CIRCLE

NEW YORK, N. Y. 10023

Paul Silas, President
John Havlicek, Vice President
Wes Unseld, Vice President
Bob Lanier, Secretary
Lawrence Fleisher, General Counsel

March 1, 1976

Re: Oscar Robertson, et al. v. NBA, et al.

Dear Class Member:

In the past few weeks you may have learned from the news media that a settlement in principle has been reached between the players and the NBA Board of Governors in your class action antitrust suit.

As you have been notified in the past, you are a member of the class. This letter is being sent to you to keep you current on the present status of the settlement.

After reaching agreement with the owners, your attorneys and the NBA attorneys met with Judge Carter to outline the settlement terms. The Court is aware that the parties are in the process of drafting the settlement papers, which necessarily are not simple documents. The Court will be requested to review the settlement agreement after it has been signed and presented to him; then, if the Court directs, a notice from the Court will be sent to you setting a hearing date. Only after such a hearing will the settlement become final.

The settlement essentially deals with two areas. First, present practices in the NBA which have been the subjects of your antitrust action will be eliminated or changed. The draft system will change; the option clause will be eliminated from all present and future contracts, except for voluntarily negotiated clauses and certain rookie contracts; and compensation between teams when a free agent signs with a new team will be phased out and replaced with a right of first refusal.

Second is a Settlement Fund of $4.3 million which will be paid over an eight-year period by the owners to the class of approximately 480 members. Each class member will receive a share of the Settlement Fund according to a formula to be proposed to the Court which is based on the number of seasons he played during the period 1966-67 through 1975-76. The NBA owners did not participate in determining this formula. Because of different prevailing economic

conditions, the earlier years in that period are weighed more heavily than later years, so that depending on the number of full years you played and the particular years involved, under the proposed formula you could receive between $1,000 and $30,000. The owners will also pay all legal fees to counsel for the class in the Robertson case, which means not only that the Settlement Fund will not be decreased, but also that the special assessments will be returned to the class members who made such payments.

Let me repeat; the exact terms of the settlement have not been finalized. When they have been, hopefully in the next month, they will be presented to the Court. If the Court is satisfied, you will receive a formal notice outlining what procedures are to be followed before the settlement receives final Court approval.

Best regards.

Sincerely,

Larry

Lawrence Fleisher

LF:CAP

Exhibit D

1215

WEIL, GOTSHAL & MANGES

767 FIFTH AVENUE • NEW YORK, N.Y. 10022

TELEPHONE (212) PLAZA 8-7600

CABLE "WEIGHS"
TELEX
422281
423144

CHARLES BELLOSON
COUNSEL

June 2, 1976

Richard G. Phillips, Esq.
David Berger, P.A.
1622 Locust Street
Philadelphia, Pennsylvania 19103

Re: Oscar Robertson, et al., v.
National Basketball Association, et al.,

Dear Richie:

This is to confirm our telephone conversation today wherein I made clear to you and Paul McMahon of your office our position that plaintiffs do not believe the discovery requests you filed last week on behalf of Chet Walker are either timely or proper. Nevertheless, as I told you and Paul, we will continue to make every effort to cooperate with your office and our entire file in the Robertson case is available for your inspection subject, of course, to the confidentiality stipulations which have been entered into by the parties to the action. Of course, as I noted in our conversation, these files have been available to you for many months now. Accordingly, your failure to seek until now to review them must be viewed in the same light as your delay in filing the motion to postpone the date of the Class Action Settlement hearing.

Also, although I do not know to what proper use you would put this information, in a further effort to cooperate I am listing below the names of those individuals who took part in the negotiations relating to the settlement of the Robertson action.

For the plaintiffs: Lawrence Fleisher, Paul Silas, Oscar Robertson, John Havlicek, Jeff Mullins and Jim McMillian with Peter Gruenberger, Ira M. Millstein, Stephen Jacobs and James W. Quinn acting as counsel.

For the defendants: Lawrence O'Brien, Simon Gourdin Richard Bloch, Abe Pollin, William Alverson, Michael Burke and Arth Wirtz with George Gallantz, David Stern, Michael Cardozo, Harvey Benjamin and Jeffrey Mishkin acting as counsel.

Finally, as I indicated to Paul on the telephone, since you have been supplied with copies of the Settlement Agreement and the Exhibits thereto, we believe that even if your discovery requests were proper you have already been supplied or given access to all the information which you have any right to obtain.

Sincerely,

WEIL, GOTSHAL & MANGES

By _____
James W. Quinn

JWQ:dt

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., Plaintiffs, -against- NATIONAL BASKETBALL ASSOCIATION, et al., Defendants.	70 Civ. 1526 (RLC) AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MICHAEL A. CARDOZO, being duly sworn, deposes and says:

1. I am a member of Proskauer Rose Goetz & Mendelsohn, attorneys for all NBA defendants except Madison Square Garden Corporation and Madison Square Garden Center, Inc. I make this affidavit in opposition to the motion of Chester Walker, a named plaintiff, to postpone the June 23, 1976 hearing on the adequacy of the proposed settlement in this action.

2. This affidavit and the accompanying memorandum of law will be addressed solely to the "merits" of Walker's motion. In our opposition to the motion, we do not rely upon the procedural failings of both the motion and the interrogatories that purportedly accompanied it. These deficiencies include the fact that neither the motion nor the interrogatories have been served on my firm (the only copy of

the motion we received was supplied to us by plaintiffs' counsel); the seven, rather than ten, days provided for as a return date of the motion; the absence of a moving affidavit; and interrogatories which, in addition to seeking information from parties, demand answers from "counsel for . . . the National Basketball Association." On the merits, the motion is no more than a misguided attempt to disrupt an arms-length settlement that comports with the most stringent standards that could be applied to the settlement of complex antitrust litigation.

3. Since Walker's motion is not accompanied by any affidavit, no factual justification is offered in its support. Apparently, the adjournment is thought necessary to effect one of two different purposes. First, this Court is asked to continue the settlement hearing to enable Walker's counsel to have sufficient opportunity to learn about the terms of the settlement agreement. The granting of such relief would be unwarranted. Wholly apart from the fact that the outline of the settlement was known to Walker in early February, and actual notice of the June 23 hearing date, and the availability of the settlement agreement, was given to Walker in early May, the settlement agreement speaks for itself. The terms and provisions of the compromise are set out in 55 pages, plus twelve lengthy exhibits, of elaborate detail. Moreover, notwithstanding the impropriety of Walker's interrogatories, the information about the settlement that they request has been provided. (Exhibit A annexed hereto.)

4. Second, Walker's request for an adjournment would seem to be premised on an erroneous concept. Walker

argues, in effect, that in order to object to a settlement, new counsel for a class member should be given time to conduct an independent factual investigation into the merits of the lawsuit so as to determine whether the settlement is fair and reasonable. But as the Second Circuit has made clear, and as our accompanying memorandum of law demonstrates, an adjournment for this purpose is not permissible. This is particularly true in a case such as this in which voluminous pretrial discovery has taken place and discovery had been concluded before settlement was agreed upon. What additional facts could be brought to light by further discovery in a case in which 143 different witnesses have been deposed, 252 deposition days have been consumed, and 45,000 pages of testimony have been transcribed? Add this to the approximately 178,000 different documents produced by various persons; the five different sets of interrogatories answered by the [redacted] and its teams; and the interrogatory answers served by [redacted] plaintiffs; and the utter frivolousness of Walker's motion becomes apparent. Moreover, both Walker and his present counsel were direct participants in the discovery process. Each was deposed, Chester Walker produced documents (although his counsel refused to do so), and Chester Walker answered interrogatories. To adjourn the settlement hearing to enable counsel for Walker to obtain still further discovery material would obviously serve no purpose.

The Timing of the Instant Motion

5. In his memorandum Walker states that he was notified of the proposed settlement by notice dated May 4,

1976 but that, because he now seeks answers to interrogatories, additional time is needed to "complete discovery." Accordingly, Mr. Walker (one of approximately 500 class members) argues that the settlement hearing in this action should now be adjourned. Wholly apart from the facts that Walker's interrogatories have been answered and his papers are devoid of any indication of what other discovery, if any, is sought, the claim that the June 23, 1976 hearing date does not allow adequate time to frame objections is based upon a view of the chronology in this case that does not comport with reality. The actual chronology of relevance is as follows:

(a) On February 3 and 17, 1976, the NBA defendants' motions to temporarily restrain and preliminarily enjoin Walker from prosecuting a separate action in Pennsylvania were argued. Counsel for Walker attempted to demonstrate that the proposed settlement (which had been announced in early February and was widely disseminated in the press) did not adequately deal with Mr. Walker's claim.

(b) On February 23, 1976, Mr. Walker himself swore that he had "examined the settlement proposal." At the same time Mr. Walker assured the Court that the substitution of counsel he was requesting would "in no way hinder or retard the prosecution of the litigation."

(c) More significantly, in the same February 23, 1976 affidavit, Mr. Walker said that he had already concluded that the settlement did not treat him fairly. At that time

he was able to state that the settlement "will not help in my problem with the Chicago Bulls" nor "will it benefit [me] to any great extent generally."

(d) By order dated February 27, 1976, this Court found that Walker's subsequently commenced action in Pennsylvania was "duplicative of the Robertson action," and thus issued a preliminary injunction "to prevent impairment of this court's jurisdiction."

(e) On March 1, 1976, when it became apparent that the settlement agreement would take some additional time to finalize, counsel for plaintiffs, with approval from the Court, sent a letter to all class members outlining the terms of the settlement. A copy of this letter is annexed hereto as Exhibit B.

(f) On April 29, 1976, the proposed settlement agreement was signed by the parties and filed with the Court.

(g) By notice dated May 4, 1976, all members of the class were notified by mail that the settlement agreement had been submitted to the Court, that sufficient showing had been made as to its adequacy to permit the sending out of the notice, that all pleadings, including the settlement agreement, were on file with the Court, and that a hearing would be held some 7 weeks later, on June 23, 1976, at which time objections filed by June 4, 1976 would be heard.

6. If Walker and his present counsel had first learned of the proposed settlement on May 4, 1976, an adjournment would not be justified without an additional showing not made here. Seven weeks to prepare objections is more than adequate. However, the entire discussion becomes academic in light of the fact that both Walker and his present

counsel had actual knowledge of the settlement as early as February, 1976. When this is taken together with the chronology set forth above, even the most charitable description of the Walker arguments as to his need for time would be that they are disingenuous.

The Proposed Interrogatories

7. We do not quarrel with the proposition that a class member is entitled to inform himself on the issues and facts of the case being settled, and to receive a full explanation of the scope and effect of any proposed settlement.

8. This does not mean, however, that any member of a class can, as a matter of right, put counsel and the parties to the task of providing additional discovery without some satisfactory showing of entitlement. In some cases, such as Girsh v. Jepson, which is relied upon by Walker, some discovery should be permitted. If a settlement is proposed at an early stage of a case, if discovery has just begun, and if the court was so uninvolved in the facts and issues of the case as to be unable to perform its fiduciary obligations to the absent class members, then additional discovery is required.

9. In the instant case, the extensive previous discovery, the Court's deep involvement in all stages of the case, and the detail of the settlement agreement itself, combine to minimize the degree to which an objectant should be permitted to burden counsel and the Court with extraneous requests for discovery of information that, for the most part, has been and is readily available to counsel for the objectant.

10. Moreover, to the extent that Walker seeks to ascertain why the settlement is fair, class counsel's conclusion as to the fairness of the agreement has been set forth in detail in the affidavit of Peter Gruenberger, Esq., submitted in support of the fee application. That affidavit, sworn to April 29, 1976, and filed one day later, is and, as the May 4, 1976 class notice stated, has been available to Walker.

11. Accordingly, on the facts of the instant case, Walker is not entitled to answers to the interrogatories sought to be propounded by him.

12. Notwithstanding Walker's lack of entitlement, the NBA defendants and their counsel have made the information sought by Walker available to him. Unlike counsel in the case relied upon by Walker (which apparently included Walker's present counsel), we do not propose to deny to an objectant access to such information as might arguably be relevant to a good faith attempt to assess the issues and facts of the litigation. Annexed hereto as Exhibit A are answers to so many of the interrogatories propounded by Walker as seek information of that type. Moreover, we have been advised by Weil, Gotshal & Manges, counsel for the class plaintiffs, that all the various material accumulated in the course of discovery--deposition transcripts, documents and interrogatories -- as well as the entire pleadings file, is available at their offices for inspection by any interested objectant.

WHEREFORE, it is respectfully requested that Walker's motion be denied in its entirety.

MICHAEL A. CARDOZO

Sworn to before me this
4th day of June, 1976.

Notary Public

MICHELE KRUGMAN
NOTARY PUBLIC, State of New York
No. [illegible]
Qualified in Nassau County
Commission Expires March 30, 1977

Answer to interrogatories has been omitted since it has been served.

1226

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., Plaintiffs, vs. NATIONAL BASKETBALL ASSOCIATION, et al., Defendants.	70 Civ. L526 (RLC) OBJECTION OF WILTON N. CHAMBERLAIN TO PROPOSED SETTLEMENT AGREEMENT DATED APRIL 29, 1976
AMERICAN BASKETBALL ASSOCIATION, et al., Cross-claimants, vs. NATIONAL BASKETBALL ASSOCIATION, Cross-defendants.	

Pursuant to notice of this Court and by way of special appearance without waiving his rights to contest the jurisdiction of this Court, WILTON N. CHAMBERLAIN (herein "CHAMBERLAIN") by and through his attorneys, Seymour Goldberg and John H. Boone, object to the proposed Settlement Agreement dated April 29, 1976, a copy of which is annexed as Exhibit 1 to "Settlement Order No. 1" in the above-referenced action.

The basis of this objection is as follows:

1. The Settlement Agreement, paragraph 7(a), attempts to impose a covenant not to sue on Mr. Chamberlain which may have the effect of barring Mr. Chamberlain's damage claim as asserted in Case No. CV-75-4258-AAH, United States District Court for the Central District of California without affording Chamberlain an opportunity to request exclusion from the class as required by Rule 23 of the Federal Rules of Civil Procedure and the Fifth Amendment to the Constitution of the United States.

BONE, SCHATZEL & HAMRICK
ATTORNEYS AT LAW
[illegible]
SAN FRANCISCO [illegible]
[illegible]

2. The Settlement Agreement attempts to impose upon the class members a covenant not to sue (paragraph 7(a)). This is beyond the power of the District Courts in Rule 23 class actions. The better procedure would be to provide only for a judgment of dismissal.

3. The Settlement Agreement and proposed Final Consent Judgment provides for the retention of exclusive jurisdiction in this Court and a Special Master to be appointed by this Court to hold hearings on any alleged violations of the Settlement Agreement and Final Consent Judgment (paragraph 8). There is no basis in law for such a provision. It has the effect of depriving Mr. Chamberlain of his right to assert his claim against the National Basketball Association ("NBA") in any appropriate forum of his choice. It will have the further effect of forcing this Court to resolve the effect of any settlement or judgment in the above-referenced action on Mr. Chamberlain's action in Los Angeles, a matter which this Court has already indicated should be resolved by the Los Angeles Federal District Court.

4. The amount of money which the Settlement Agreement provides for Mr. Chamberlain ($26,887.45 payable over 8 years) is completely inadequate to compensate Mr. Chamberlain for the damages he has sustained by reason of the alleged antitrust violations asserted in Mr. Chamberlain"s cause of action in the Los Angeles Federal District Court.

5. The Settlement Agreement fails to provide for any change in NBA procedures which would terminate the antitrust violations inherent in the boycott of Mr. Chamberlain by reason of the application by the NBA of an indemnification rule. Paragraph 2(c) purports to modify a rule called the "Compensation Rule", however, the rule as described is not the same as the indemnification rule as applied against Mr.

CONE, SCHATZEL & HAMRICK
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[illegible] MONTGOMERY ST.
SUITE [illegible]
SAN FRANCISCO 94104
(415) 788-[illegible]

Chamberlain and in any event the proposed paragraph 2(c) would not afford any remedy to Mr. Chamberlain.

In support of these objection Mr. Chamberlain will rely on the documents described on Exhibit A on file in this case, and on the oral argument of his counsel at the hearing on June 23, 1976.

Dated: June 3, 1976

Respectfully submitted,

JOHN H. BOONE
BOONE, SCHATZEL & HAMRICK

SEYMOUR S. GOLDBERG
SEYMOUR S. GOLDBERG LAW CORPORATION

By John H Boone
Attorneys for Respondent
Wilton N. Chamberlain

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111 MONTGOMERY ST.
SUITE 600
SAN FRANCISCO 94104
(415) 788-0656

EXHIBIT A

1. Order to Show Cause dated January 9, 1976 with annexed Affidavits and Certificate of Michael A. Cardozo dated January 8, 1976 ("Cardozo Substantive Affidavit," "Cardozo Procedural Affidavit," Exhibits to "Cardozo Substantive Affidavit" and "Certificate").

2. Memorandum of Points and Authorities on Behalf of Wilton N. Chamberlain in Opposition to the Motion by the National Basketball Association for a Preliminary Injunction dated January 16, 1976.

3. Affidavit of John H. Boone dated January 16, 1976.

4. Affidavit of Seymour S. Goldberg dated January 19, 1976.

5. Memorandum of National Basketball Association in Support of their Motion for a Preliminary Injunction dated January 22, 1976.

6. Reply Affidavit of Michael A. Cardozo dated January 22, 1976.

7. Transcript of Court Hearing on January 23, 1976.

8. Opinion dated March 31, 1976.

9. Settlement Order No. 1 with amended Stipulation and Settlement Agreement dated April 29, 1976.

10. Deposition of Wilton N. Chamberlain takin on January 30, 1976.

CONE, SCHATZEL & HAMRICK
ATTORNEYS AT LAW
[illegible]
SAN FRANCISCO 94104
(415) 788-0656

1230

CERTIFICATE OF SERVICE BY MAIL

I, BARBARA J. PEREZ, hereby declare under penalty of perjury:

1. That I am a citizen of the United States, over the age of 18 years and not a party to the foregoing cause of action. My business address is 235 Montgomery Street, Suite 420, San Francisco, California 94104.

2. That I forwarded by U. S. mail, postage prepaid, a copy of:

OBJECTION OF WILTON N. CHAMBERLAIN TO PROPOSED SETTLEMENT AGREEMENT DATED APRIL 29, 1976

this 3rd day of June, 1976 to the following parties:

Peter Gruenberger, Esq.
Weil, Gotshal & Manges
767 Fifth Avenue
New York, New York 10022

Robert S. Carlson, Esq.
Spengler, Carlson, Gubar & Churchill
280 Park Avenue
New York, New York 10017

Frederick P. Furth, Esq.
235 Montgomery Street, Suite 1330
San Francisco, California 94104

Michael H. Goldberg, Esq.
1700 Broadway
New York, New York

George Felleman, Esq.
Paul, Weiss, Rifkin, Wharton & Garrison
345 Park Avenue
New York, New York 10022

Michael A. Cardozo, Esq.
Proskauer, Rose, Goetz & Mendelsohn
300 Park Avenue
New York, New York 10022

Barbara J. Perez

ONE, ROHATZEL
HAMRICK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

70 Civ. 1526 (RLC)

NBA Defendants' Answers to Interrogatories of Objecting Plaintiff Walker

Proskauer Rose Goetz & Mendelsohn, counsel for all NBA defendants except Madison Square Garden Corporation and Madison Square Garden Center, Inc., hereby makes the following answers to Interrogatories filed by plaintiff Chester Walker on May 27, 1976*:

Interrogatory B.1. State whether the parties in the above-captioned case have entered into a proposed settlement. If so: (a) State the date such proposed settlement was entered into; (b) Identify each individual who negotiated for or on behalf of the parties in the above-referenced case in regard to such settlement; (c) Identify every document referring or relating to such settlement.

Answer to B.1.

The parties in the above-captioned case have entered into a proposed settlement.

(a) The proposed settlement was entered into on April 29, 1976.

(b) Upon information and belief, the following persons participated in the negotiations:

*In giving these answers, the NBA defendants do not waive their argument that, under the facts of this case, all discovery by this objecting party including these interrogatories, are improper. See affidavit of Michael A. Cardozo, sworn to June 4, 1976 and NBA defendants' memorandum of law, both submitted in opposition to Chester Walker's motion for an adjournment of the settlement hearing.

(i) for the plaintiffs - Paul Silas, Oscar Robertson, John Havlicek, Jeffrey Mullins, Jim McMillan, Lawrence Fleisher, Peter Gruenberger, James Quinn, Ira Millstein and Stephen Jacobs.

(ii) for the defendants - Richard Bloch, William Alverson, William Wirtz, Michael Burke, Abe Pollin, Lawrence F. O'Brien, Simon P. Gourdine, George G. Gallantz, David J. Stern, Michael A. Cardozo, Jeffrey A. Mishkin and Harvey E. Benjamin.

(c) The Stipulation and Settlement Agreement, and the Exhibits to the agreement, have been furnished to counsel for Walker.

Interrogatory B.2. In regard to the draft of college players into the National Basketball Association, (a) Describe in detail any modifications in the present college draft which are proposed to be made as a result of the settlement of the above-captioned case; (b) State in detail the reason(s), if any, you contend that any modifications described in subparagraph (a) above are a fair and adequate settlement of the allegations of this case; (c) Identify all individuals who negotiated on behalf of any of the parties to this case any settlement in regard to the college draft; (d) Identify any documents relevant to the settlement of this case as it applies to the college draft.

Answer to B.2.

(a) The NBA draft of college players, in effect prior to the settlement of this action, is set forth in the NBA Constitution and By-Laws, which are Exhibit D to the Stipulation and Settlement Agreement. See By-Law 2.05 and Article VI of the By-Laws. The modifications of the College Draft effected by the Stipulation and Settlement Agreement are set forth in Paragraph 2.A.(2) of the Stipulation and Settlement Agreement.

(b) The NBA defendants assert that all practices challenged in the complaint are fair, reasonable and legal. However, to avoid the time and expense of a trial that

could have lasted several months and an appellate process that could have lasted several years, the NBA defendants agreed to the terms of the Stipulation and Settlement Agreement, which will increase the number of teams in the NBA with which present and future players may negotiate and sign during their careers, and which provide for payments by the NBA defendants of well over 5 million dollars. In light of the reasonableness of the original practices, the far-reaching modifications of those practices (for the benefit of NBA players) are, in the view of the NBA defendants, necessarily a fair and adequate settlement of the allegations of this case.

Plaintiffs objected to the College Draft, especially as it might be construed as binding a player to one team indefinitely. The Stipulation and Settlement Agreement now gives the NBA team drafting a player under normal circumstances just one year in which to sign him, failing which he becomes eligible for a second draft. If unsigned within one year of the second draft, the player may, under normal circumstances, negotiate and sign with any NBA team.

Plaintiffs objected to the NBA's compensation rule, under which the Commissioner could award compensation to a team losing a player. Plaintiffs assert that this was used to "penalize" NBA teams signing players from other teams. Under the Stipulation and Settlement Agreement, the present compensation rule will be phased out, to be replaced by a "Right of First Refusal", and there are assurances that while the compensation rule is retained it will not be used as a penalty.

Plaintiffs objected to the "option clause" (referred to by plaintiffs as a "reserve clause") which appeared in the NBA Uniform Player Contract. Under the Stipulation and Settlement Agreement, the option clause will be removed from all uniform player contracts, except one-year contracts for rookies, and will be inserted in other contracts only if specifically agreed to by the player concerned.

(c) See Answer to Interrogatory B.1(b) above.

(d) The Stipulation and Settlement Agreement, and Exhibits, have been furnished to counsel for Walker.

Interrogatory B.3. In regard to the option clause contained in paragraph 22 of the National Basketball Associations Uniform Player Contract, (a) Describe in detail any modifications in the present option clause which are proposed to be made as a result of the settlement of the above-captioned case; (b) State in detail the reason(s), if any, you contend that any modifications described in subparagraph (a) above are a fair and adequate settlement of the allegations of this case; (c) Identify all individuals who negotiated on behalf of any of the parties to this case any settlement in regard to the option clause; (d) Identify any documents relevant to the settlement of this case as it applies to the option clause.

Answer to B.3.

(a) The modifications in the present option clause are set forth in Paragraph 2.B. of the Stipulation and Settlement Agreement.

(b) See answer to B.2(b) above.

(c) See answer to B.1(b) above.

(d) The Stipulation and Settlement Agreement, and Exhibits, have been furnished to counsel for Walker.

Interrogatory B.4. In regard to the compensation rule currently in use in the National Basketball Association, (a) Describe in detail any modifications in the present compensation rule which are proposed to be made as a result of the settlement of the above-captioned case; (b) State in detail the reason(s), if any, you contend that any modifications described in subparagraph (a) above are a fair and adequate settlement of the allegations of this case;

(c) Identify all individuals who negotiated on behalf of any of the parties to this case any settlement in regard to the compensation rule; (d) Identify any documents relevant to the settlement of this case as it applies to the compensation rule.

Answer to B.4.

(a) The modifications in the present compensation rule are set forth in Paragraph 2.D. of the Stipulation and Settlement Agreement.

(b) See answer to B.2(b) above.

(c) See answer to B.1(b) above.

(d) The Stipulation and Settlement Agreement, and Exhibits, have been furnished to counsel for Walker.

Interrogatory B.5. State the amount of money, if any, which each settling defendant in the above-captioned case proposes to pay in settlement of the case.

Answer to B.5.

See Paragraphs 3. and 4. of the Stipulation and Settlement Agreement.

Interrogatory B.6. In regard to the amount of the money referred to in the answer to the previous interrogatory, (a) State whether you contend that the amount referred to above is adequate as a settlement in the above-captioned case; (b) If your response to subparagraph (a) above was in the affirmative describe in detail your reason(s) you contend such settlement was adequate; (c) Identify each individual who negotiated for or on behalf of any of the parties in the above-captioned case in regard to payment of the above sum in settlement of this case; (d) Identify any documents which refer or relate to the payment of the above sum of settlement of this case.

Answer to B.6.

(a) See answer to B.2(b) above.

(b) See answer to B.2(b) above.

(c) See answer to B.1(b) above.

(d) The Stipulation and Settlement Agreement, and Exhibits, have been furnished to counsel for Walker.

Interrogatory B.7. Describe the formula, if any, under which any sums paid in settlement of this case would be distributed to class members.

Answer to B.7.

See Exhibit L to Stipulation and Settlement Agreement.

Interrogatory B.8. In regard to any formula referred to in answer to the previous interrogatory, (a) State whether you contend this formula adequately and fairly distributes settlement fund to class members, (b) Describe in detail your reason(s) for contending that the above formula adequately and fairly distributes the settlement fund to class members; (c) Identify each individual who participated in establishing or setting the above formula; (d) Identify all documents which refer or relate to the above formula.

Answer to B.8.

(a) The NBA defendants took no part in the determination of the distribution of the settlement fund.

(b) See Answer to B.8(a) above.

(c) NBA defendants lack knowledge or information to answer this question.

(d) The Stipulation and Settlement Agreement, and Exhibits, have been furnished to counsel for Walker.

Interrogatory C.1. Identify each individual who was deposed in the above case and state the date of each such individual's deposition.

Answer to C.1.

Deponent	Date of Deposition
Wm. Alverson	6/24,25/75
Roone Arledge	5/6/75
Steve Arnold	11/21/75
Keith Adkinson	5/13/75
Arnold Auerbach	11/18/75
Ron Bain	5/7/75
Richard Bloch	7/17,18/75
Leonard Bloom	7/21/75
Roy Boe	8/21,22,23/75, 10/29/75
William Bradley	8/[illegible]22/75, 10/9,10/75
John Brown	9/30/75
Ellie Brown	10/1/75

Answer to C.1. Contd.

Deponent	Date of Deposition
Michael Burke	1/27,28/76
Normal Blass	1/14/76
Joe Caldwell	10/7/75
Robert Carlson	7/1,2/75, 9/4,10,17/75, 10/29/75
Wendell Cherry	6/25,26,27/75
Archie Clark	8/28/75
Jack Kent Cooke	7/14,15,16/75, 10/27/75
Mel Counts	6/13,14/75
Robert Cousins	7/29/75
Tom Cousins	7/30/75
Bill Daniels	1/15,16/76
Dave DeBusschere	11/24,25/75, 1/12/76
Jack Dolph	5/19,20,21,22,27/75, 10/20,21/75, 1/28/76
Angelo Drossos	8/8/75
Allan Eagleson	1/23/76
Wayne Embry	11/6/75
Charles Finley	9/22/75
Marv Fishman	11/6/75
Larry Fleisher	11/26/75, 12/3,4,9,15/75 1/12,13,14,19,20,21,22/76
Earl Foreman	1/27,28/76
George Gallantz	6/16/75
Howard Ganz	6/2,16/75
Ed Garvey	1/30/76
Jos. Geary	8/7/75
Sam Gilbert	7/16,17/75
Frank Goldberg	7/22/75
Eddie Gottlieb	7/29,30/75
Simon Gourdine	6/19,20/75, 8/18,19/75
John Havlicek	9/18/75
Ned Irish	8/26,27,28/75
Walter Kennedy	9/8,9,11,12,16,17,19/75, 11/13,14/75, 12/5,16,17/75
Don Kojis	6/12,13/75, 7/22/75
Irving Kosloff	10/16/75
Marvin Kratter	1/26,27/75
Thomas Kuchel	4/8,9/75, 7/14/75
Irving Levin	7/22/75
Howard Lichtenstein	6/20/75
Dan Mayers	9/18/75
Thurlo McCrady	10/8,9,15,17/75
John McGlocklin	10/30/75
McCoy McLemore	10/15/75
Wm.MacPhail	5/12/75
Tom Meschery	8/9/75
Franklin Mieuli	11/4,5,6/75
Nick Mileti	1/8/76
Marvin Miller	1/31/76
Jeff Mullins	7/9,10/75
Todd Munchak	8/11,12/75
Ray Patterson	8/5,6/75
Wesley Pavalon	6/25/75
Richard Phillips	11/10/75
Abe Pollin	12/2,3,4/75
Wm. Putnam	7/28/75

Answer to C.1. Contd.

Deponent	Date of Deposition
Elmer Rich	10/23/75
Oscar Robertson	10/22/75, 1/14,15,16/76
Allan Rothenberg	7/17,18,21/75, 10/28/75
Herman Sarkowsky	11/17/75
Ronald Schacht	6/3/75
Carl Scheer	12/9,10,11,12/75
Sam Schulman	6/11,12,13/75, 10/29/30/75
Don Schupak	7/31/75
Arthur Sekerak	5/5/75
Louis Shaffel	1/16/76
Edw. Silver	6/19/75
Paul Snyder	10/6/75
Mike Storen	10/13,14/75, 1/8,10/76
Richard Tinkham	9/29,30/75, 10/1/75, 11/10,11,12/75
Wesley Unseld	9/3/75
Dick Van Arsdale	8/5/75
Van Cunningham	9/19/75
Chet Walker	8/26,27/75
Edw. Weinberg	5/8,9/75
Irwin Weiner	1/28,29/76
Jerry West	12/17/75
Pat Williams	1/30/76
A. Wirtz	9/25/75
Wm. Wirtz	9/24/75
Kareem Abdul-Jabbar	1/15/76
Rick Adelman	12/17/75
Lucius Allen	11/20/75
Al Attles	11/24/75
Zelmo Beaty	12/15,19/75
Walt Bellamy	12/5/75
Bob Boozer	12/8/75
Emmette Bryant	12/9/75
Tom Burleson	1/20/76
Austin Carr	1/6/76
Fred Carter	11/6/75
Wilt Chamberlain	1/30/76
Dave Cowens	1/16/76
Bob Dandridge	12/1/75
Ernie DiGregorio	1/5/76
Terry Dischinger	12/11/75
John Egan	11/14/75
Keith Erickson	11/6,7/75
Fred Foster	11/26/75
Walt Frazier	1/26/76
Dave Gambee	12/12/75, 1/29/76
Dick Garrett	12/9/75
Hal Greer	12/12/75
Gary Gregor	1/12/76
Matt Guokas	11/7/75, 12/18/75
Clem Haskins	11/7/75
Spencer Haywood	1/22/76
Gar Heard	12/10/75
Toby Kimball	12/16/75
Bob Lanier	11/24/75
Kevin Loughery	12/16/75, 1/29,30/76

Answer to C.1. Contd.

Deponent	Date of Deposition
Eddie Miles	11/11/75
Earl Monroe	1/21/76
Steve Patterson	11/17/75
Geoff Petrie	1/19/76
Mandi Abdul-Rahman	12/10/75
Pat Riley	12/18/75
Curtis Rowe	11/11/75
Cazzie Russell	1/16/76
Charlie Scott	12/4/75
Ray Scott	11/13/75
Paul Silas	12/4/75
Adrian Smith	12/3/75
Elmore Smith	1/29/76
Greg Smith	11/18/75
Dick Snyder	11/17/75
Rod Thorn	1/9/76
Rudy Tomjanovich	12/22/75
Tom Van Arsdale	11/13/75
Jimmy Walker	1/13/76
Bill Walton	1/19/76
Walt Wesley	12/2/75
Lenny Wilkens	11/18,19/75, 1/19,20/76
Dave Wohl	11/14/75

Interrogatory C.2. Identify each transcript of each deposition referred to in Interrogatory 1, immediately above.

Answer to C.2.

Transcripts of the depositions referred to in the answer to C.1 above are available for inspection at the offices of Weil, Gotshal & Manges, 767 Fifth Avenue, New York, New York.

Interrogatory C.3. Identify all interrogatories submitted to you in reference to the above-captioned case.

Answer to C.3.

One set of interrogatories was propounded by the plaintiffs and served on the NBA and each and every member NBA team except New Orleans. Copies of these interrogatories are available for inspection at the offices of Weil, Gotshal & Manges. Four other sets of interrogatories were served by

the American Basketball Association on the NBA and each and every member of the NBA, and are also available for inspection at Weil, Gotshal & Manges.

Interrogatory C.4. Each interrogatory addressed to counsel for plaintiffs and counsel for defendant the National Basketball Association is corporated herein be referenced and restated.

Answer to C.4.

Counsel for NBA defendants incorporate by reference herein each and every interrogatory answer that was propounded above.

Interrogatory D.1.

Do you contend that if plaintiff Chester Walker remains a member of the class and participates in the proposed settlement herein, he will be barred from prosecuting the case of Chester Walker v. National Basketball Association Civ. Act. No. 76-291 (E.D.P.A.)? A copy of the complaint in that case is attached hereto as Exhibit A.

Answer to D.1.

Yes.

Dated: New York, New York
June 4, 1976

PROSKAUER ROSE GOETZ & MENDELSOHN

By _____

Attorneys for all Defendants except Madison Square Garden Corporation and Madison Square Garden Center, Inc.
300 Park Avenue
New York, New York 10022

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MICHAEL A. CARDOZO, being duly sworn, deposes and says: he is a member of the firm of Proskauer Rose Goetz & Mendelsohn, attorneys for the NBA defendants in the above-entitled action other than Madison Square Garden Corp. and Madison Square Garden Center, Inc.; that he has read the foregoing answers to objecting plaintiff Walker's interrogatories and knows the contents thereof; and that said answers are true and correct to the best of his knowledge, information or belief.

Michael A. Cardozo

Sworn to before me this
4th day of June, 1976.

Michele Krugman
Notary Public

MICHELE KRUGMAN
NOTARY PUBLIC, State of New York
No. 30-4622102
Qualified in Nassau County
Commission Expires March 30, 1977

1242

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

v.

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

70 Civ. 1526 (RLC)

NOTICE OF INTENTION TO BE EXCLUDED FROM THE SETTLEMENT OR, IN THE ALTERNATIVE, TO OBJECT TO THE SETTLEMENT

PLEASE TAKE NOTICE that plaintiff Chester Walker elects to exclude himself from the proposed settlement of this case, or in the alternative, objects to the proposed settlement of the case and intends to appear at the settlement hearing.

Paul McMahon & P.C.

David Berger
Richard Phillips
Paul McMahon
1622 Locust Street
Philadelphia, PA 19103

and

Mortimer Wolf
REMBAR, WOLF & CURTIS
19 West 44th Street
New York, NY 10036

Attorneys for Objecting
Plaintiff Chester Walker

OF COUNSEL:
DAVID BERGER, P.A.
ATTORNEYS-AT-LAW

1243

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., Plaintiffs, v. NATIONAL BASKETBALL ASSOCIATION, et al., Defendants.	70 Civ. 1526 (RLC)

NOTICE OF INTENTION TO BE EXCLUDED FROM THE SETTLEMENT OR, IN THE ALTERNATIVE, TO OBJECT TO THE SETTLEMENT

PLEASE TAKE NOTICE that Clifford Ray elects to exclude himself from the proposed settlement of this case, or in the alternative, objects to the proposed settlement of the case and intends to appear at the settlement hearing.

Richard G. Phillips
Paul J. McMahon
1622 Locust Street
Philadelphia, PA 19103

and

Mortimer Wolf
REMBAR, WOLF & CURTIS
19 West 44th Street
New York, NY 10036

Attorneys for Objector
Clifford Ray

1244

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

70 Civ. 1526 (RLC)

AFFIDAVIT IN FURTHER SUPPORT OF SETTLEMENT AND IN OPPOSITION TO OBJECTIONS OF CHESTER WALKER, WILTON N. CHAMBERLAIN AND CLIFFORD RAY

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

PETER GRUENBERGER, being duly sworn, deposes and says:

1. I am a member of the bar of this Court and of the firm of Weil, Gotshal & Manges, attorneys for plaintiffs and the class in this action and I am fully familiar with the facts set forth herein. I make this affidavit in further support of the proposed settlement of this class action and in opposition to the objections of Wilton N. Chamberlain, Chester Walker and Clifford Ray.

2. The history of this litigation, including the benefits obtained by all members of the class during the course of the action and as a result of the settlement, is set forth in detail in my Affidavit in Support of Application for Award of Attorneys Fees, Costs and Disbursements, dated April 29, 1976 ("Fee Affidavit"), a copy of which is annexed hereto as Exhibit A.

3. On February 2, 1976, after nearly six years of active litigation in this Court, in Congress and before the National Labor Relations Board and following prolonged negotiations between named plaintiffs, class members and their counsel and representatives of the NBA defendants and their counsel, an agreement in principle to settle this action was reached. After nearly another three months of intensive further negotiations as to details and drafting by counsel for both sides, a final Settlement Agreement, dated April 29, 1976, was presented to this Court, providing for elimination or significant modification of the restraints challenged in this action and payment by the NBA defendants of $4.3 million in damages plus all attorneys' fees, costs ar disbursements. On May 4, 1976, the Court, having found that obable cause existed that the Settlement Agreement provided for a fair, reasonable and adequate settlement, ordered that a Notice of Settlement of Class Action be sent to all class members. The Notice provided that any class member who objected to the proposed settlement or to the fee application of class counsel should file written objections by June 4, 1976 and appear at a hearing on June 23, 1976. That Notice was mailed on May 5, 1976 to the 479 members of the class.

4. Only three out of 479 members filed objections purporting to challenge the fairness, adequacy and reasonableness of this far reaching settlement which finally, after almost six and one-half years of litigation, seeks to bring antitrust peace between the players and owners in the NBA. The Court

should note that virtually all professional basketball players in the NBA are represented by individual counsel, many of whom have made it a point to keep abreast of the litigation and the settlement. From all such counsel, only two have filed objections -- one representing Clifford Ray and Chester Walker* and the other representing Wilt Chamberlain.** While two of these objectors purport to give reasons therefor (the other gives none), the objections appear to focus not on the merits of the settlement, but rather on the peculiar posture of these players, whose problems have not been caused by the settlement.

5. Not one of the three objections is based upon an affidavit of the objecting class member, nor even upon the affidavit of any counsel. Not one rebuttal has been made or even is attempted to be made to a single fact set forth in my Fee Affidavit.

6. Set forth below are the salient facts showing, in addition to the showing already made in my Fee Affidavit, that every standard of fairness, reasonableness and adequacy of this settlement has been more than met and that the three objections have no factual support. Also submitted in further support of the settlement are the affidavits of Oscar Robertson, a retired player and a named plaintiff; Robert Lanier, an active player and a member of the class; and Lawrence Fleisher, General Counsel of the National Basketball Players Association ("Players Association"). These

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* Ray and Walker are represented by Richard G. Phillips, of the Philadelphia firm of David Berger, P.A., who stated to the Court that he personally represents over 30 players who are members of the class (Transcript of February 3, 1976, p. 21).

** Chamberlain is represented by John H. Boone, of San Francisco.

affidavits show, inter alia, that all the players in the class have been kept apprised of the litigation and the proposed settlement at each step of the way and as a group are whole-heartedly behind the settlement. The law, which supports this settlement in every respect, is set forth in our accompanying Memorandum In Further Support Of Settlement And In Opposition To Objections, dated June 18, 1976.

The NBA Practices Challenged By This Class Action

7. As of April 1970 when this action was filed, only a person whose college class had graduated was eligible to be selected to play in the NBA. Such a player was "drafted" in the college draft by an NBA team, and such draft rights endured indefinitely; that is, if the player and the drafting team did not agree upon a contract, the player could not even sign a contract with another NBA team unless the drafting team relinquished its draft rights. From the time he was selected to play until the time he retired he was the property, sole and exclusive, of the one NBA team which first selected him (unless that team chose to cut or trade him). As noted below, during the course of this litigation such draft practices were changed and as part of the settlement these practices will be modified considerably in favor of the player.

8. Once the player signed with an NBA team, he "belonged" to that team forever or until the team in its discretion chose to relinquish its "reserve" rights. This perpetual reserve system was accomplished through means of the reserve clause in all players' contracts, which provided that a player was bound to play for his team beyond the stated

term of his contract, so long as the team tendered the player a contract calling for at least 75% of the player's last salary. The player could be required to play year after year with the same team even though he never signed a contract by virtue of this perpetual option provision. As noted below, during the course of this litigation the NBA modified this practice in favor of the players and as a result of this litigation even the modified practice will be entirely eliminated by August 1, 1976.

9. The restraints attached to a player from the time he left college until the end of his contract with an NBA team were further extended by a rule (known in this case as the "reserve compensation rule") which required as to any player who performed his contract in full, that although he could sign a contract with any other NBA team, the new team would have to pay compensation to the prior team. As noted below, this practice will be phased out as part of the settlement, and will be replaced by a right of refusal whereby a player who completes his contract will be able to play for the team that bids highest for his services.

10. In addition to suing against this package of practices in the NBA which we believed as a whole restrained intra-league competition for players among teams within the NBA, the players also sued to prevent the NBA from merging with the ABA in 1970. At that time there were ten ABA teams in a viable competing league, which provided an escape route from the package of restraints extant in the NBA. The NBA players successfully enjoined such a merger first in this

Court, and then in Congress by persuading the applicable Senate Subcommittee not to exempt the proposed merger from the ambit of the antitrust laws. As a result, inter-league competition has been maintained for the past six seasons. However, during the just concluded 1975-76 season, four of the ten ABA teams folded for financial reasons. One of the factors in the decision of the named plaintiffs and class members to settle this action and not to stand in the way of a merger (provided that the players' rights set forth in the Settlement Agreement were maintained) was their belief that without some kind of a merger today, the ABA would go entirely out of business, losing jobs for ABA players and class members as well (i.e., players from NBA teams might lose jobs to ABA players picked up by NBA teams).

The Proposed Settlement

11. In addition to suing to change the NBA's internal practices and to keep two leagues alive for as long as possible, this class action sought damages for the injuries to players caused by the NBA's practices during the relevant ten-year damage period -- the 1966-67 through the 1975-76 seasons. Although (a) there had never been a class action attacking restrictive practices in sports before; (b) no individual sports case had gone to judgment before our case was filed; (c) no government case had preceded or followed our case; and (d) the only damage case in sports that followed our case and which went as far as a jury verdict resulted in a zero damage award for a player (the Joe Kapp case in football) -- our settlement provides for a Settlement

Fund of $4,300,000 for the class members. This amounts to an average of $9,100 per player for each of the 479 class members. The Settlement Fund is payable over an eight-year period and is fully secured by the network television receipts of the NBA defendants. The Agreement further provides the class with specific remedies as judgment creditors and interest payments in the case of any default (See Settlement Agreement ¶3 at pp. 32-41).

12. In addition to the Settlement Fund, the NBA defendants will pay, over time, all the costs and expenses of this class action including the reasonable attorneys' fees of class counsel. The class will not have expended any amount for counsel fees during the six and one-half year history of this action. So that the class will receive as much as possible, class counsel limited its request for fees to its standard hourly charge -- normally only the beginning point in fee awards -- and has sought no premium. (See Settlement Agreement ¶4, at pp. 41-44, Fee Affidavit ¶¶ 26(c)-32.

13. The proposed settlement eliminates the package of restraints which this action originally challenged. No longer is a player barred from the time of his entry into the NBA from negotiating with and playing for more than one NBA team. The college draft is dramatically changed by the settlement. First, all high school graduates who do not wish to play basketball in college are free to play in the NBA without waiting until their college classes graduate and without having to participate in the hypocritical and unevenly applied "hardship" drafts, which prior to the settle-

ment was the only way a player could earn a livelihood in the NBA prior to the graduation of his college class (See Settlement Agreement ¶2.A(2)(f), at pp. 11-13). Second, in place of the perpetual draft rights retained by one NBA team as in the past, described above in paragraph 7, the Settlement Agreement ends the drafting team's rights with respect to a player after one year: if the player and the team do not enter into a contract within that year, that team loses its draft rights. The player then goes into a second draft, which lasts for one year only and if the second drafting team does not sign the player within that second year, the player thereafter is free to play with whichever team he chooses. In order to preserve these limited draft rights, the team with such a one-year draft right must tender the player a contract by September 16 of each year, and failing such tender the player is also free to play with any other team (See Settlement Agreement ¶2.A.(1) and (2)(a)-(d), at pp. 7-9).

14. Once the player signs a contract with an NBA team, he no longer can be required to remain with that team forever by virtue of the reserve clause. During the course of and as a direct result of this litigation, the NBA changed its perpetual reserve system, described above in paragraph 8, so as to provide for a one-year option period attached to the stated term of each player's contract. Such option no longer was perpetual and the option could no longer be exercised by tendering a contract calling for merely 75% of the player's prior compensation. Instead a player could be

bound to his team for only one year beyond the stated term of his contract, and only upon being offered 100% of his prior salary. Under the proposed settlement, even this one-year option will be eliminated. All options will end by August 1, 1976, except for (a) one-year options that can be attached to one-year contracts of rookie players and (b) options which have been or may be agreed to by other players, but only on a voluntary basis, which may include mutual options (See Settlement Agreement ¶2.B., at pp. 14-17). In addition, the team and a player in the future may agree that even in the case of a voluntary one-year option, the player can choose to sit out the option year, and still be free to play for another team thereafter. (See Settlement Agreement ¶2.C.(3)(b), at pp. 18).

15. The reserve compensation rule will not be eliminated immediately pursuant to the Settlement Agreement. The last time it will be in use will be following the 1979-80 season. During this limited time period when the rule remains in effect, a player who has completed his contract with one NBA team may sign to play for another NBA team, and if the two teams cannot thereafter agree as to the compensation, if any, to be paid to the prior team, the NBA commissioner need not but may award compensation to the prior team. In no event can any compensation awarded by the Commissioner be used as a penalty so as to discourage player movement; rather compensation will be used only to recompense a team for the loss of a player (See Settlement Agreement ¶2.C., at pp. 17-19).

16. Following the elimination of the reserve compensation rule, a right of first refusal will take effect in the NBA pursuant to the Settlement Agreement. Thereunder, a player who has completed his contract with one team may solicit bids for his services from any NBA team he desires. If his prior team does not equal or exceed the highest bid the player so receives, that team loses any further right to the player's services. Build into this right of first refusal are procedural safeguards under the auspices of a neutral arbitrator, as well as the Special Master provided for under the Settlement Agreement, to assure that compensation for such players' services remains intact (See Settlement Agreement ¶2.D., at pp. 19-32).

17. The Settlement Agreement further provides that the restrictive practices challenged in this action -- the college draft, the option clause and the reserve compensation rule -- will never again be reimposed upon the players (See Settlement Agreement ¶5(d), at p. 45). Moreover, the NBA defendants have specifically undertaken never, alone or in concert (and thus have agreed to do more than merely not violate the antitrust laws), to refuse to negotiate with a player who is free to negotiate with any team (See Settlement Agreement ¶5(a), at p. 44).

18. The Court will preserve jurisdiction to oversee enforcement of the Settlement Agreement through appointment of a Special Master, who will hear disputes on an expedited basis, subject to review by the Court, and players will not have to pay any costs relating to the Special Master unless they bring an enforcement proceeding and are awarded no relief (See Settlement Agreement ¶8, at pp. 49-51).

19. Each material point in the settlement was negotiated and approved by a committee consisting of named plaintiffs (Oscar Robertson, John Havlicek and Jeff Mullins), class members (Paul Silas and Jim McMillian) and counsel on behalf of the players and a committee of NBA owners and their counsel. The negotiations were quite intensive and were always at arms-length (See Fee Affidavit ¶¶22-24). The settlement was forged as a compromise by persons who not only had the most knowledge about the lawsuit but also about the needs of professional basketball and its players. I turn now to the background and specific facts relating to the three objections filed against the settlement.

Clifford Ray

20. Clifford Ray is a class member and an active player in the NBA, who has played in the NBA since the 1971-72 season, first with the Chicago team and now with the Golden State Warriors. After Ray's first year, Ray signed a contract with a stated term of four years plus an option year with the Chicago Bulls (for the 1972-73 through 1975-76 seasons) for total compensation of $500,000 ($125,000 per year) plus incentive bonuses plus tuition costs. He was traded to the Warriors before the 1974-75 season and signed a contract with that team for a stated term of two years, plus an option year, providing for $350,000 in compensation ($175,000 per year). The contract is a no-cut contract, which means that so long as Ray offers to provide his services to the team, the team must pay his compensation in full, even if his performance is not deemed adequate by the team.

21. Ray performed for the Warriors for the stated term of two years, ending last month. He is entering the one-year option period, commencing with next season (the 1976-77 playing season), and apparently through Mr. Phillips is negotiating for a new contract with his team.

22. Although Mr. Phillips filed a Notice of Intention to be Excluded From the Settlement or in the Alternative to Object to the Settlement, purportedly on Ray's behalf, no affidavit, memorandum or single reason was filed to support any objection by Ray. The accompanying affidavit of Mr. Fleisher relates that Ray never made known to anyone connected with the class any objection to the Settlement (Fleisher Aff. ¶11).

23. Thus, Ray has never made known any objection to the settlement either to class counsel or to the Players Association, or to his teammate Jeff Mullins who is a named plaintiff herein or to his teammate George Johnson who is a class member and the team representative of the Golden State Warriors to the Players Association.

24. Under the settlement formula (See e.g., Plan of Distribution, annexed as Exhibit L to the Settlement Agreement), Ray, like all other players who have played in the NBA from the 1971-72 season to date, will receive three units representing $5,974.99 out of the Settlement Fund. If Mr. Ray continues to play in the NBA he will benefit from the Settlement Agreement in terms of the elimination and modification of restrictive practices in the same manner as will all future NBA players.

Chester ("Chet") Walker

25. Chet Walker is a named plaintiff and a retired NBA player, who began playing in the 1962-63 season with the Philadelphia team and played through the 1974-75 season, having played his last six seasons with the Chicago NBA team. Walker is 36 years of age.

26. Walker was one of the 14 named plaintiffs who commenced this class action on April 16, 1970. He, like all active players then in the NBA signed a specific authorization for this action to be filed. Walker in 1970 was the Chicago team representative to the Players Association. Each team representative of the 14 then NBA teams sued as a named plaintiff and representative of the entire class of NBA players, then present and future (until final judgment), who played in the NBA.

27. Walker's career in the NBA exemplifies the benefits received by all class members during the course of this litigation (See Fee Affidavit ¶25). During the 1966-67 season, the last one prior to the advent of competition from the ABA, Walker earned $20,000. He then earned $30,000 for the 1967-68 season and $35,000 for the 1968-69 season while with the Philadelphia team in the NBA. Prior to the 1969-70 season he was traded to the Chicago Bulls. When competition between the NBA and ABA began in earnest in 1969, Walker signed a three-year contract with Chicago providing for yearly compensation of $55,000, $65,000 and $75,000, respectively, for the 1969-70 season through the 1971-72 season. In 1970, class counsel obtained an injunction prohibiting any merger between the competing NBA and ABA leagues, and in 1971 and 1972 class counsel with the aid of the entire class, including Walker, defeated an attempt by the NBA and ABA to obtain a

legislative exemption for such a merger (Fee Affidavit ¶¶8-10), resulting in immediate benefit to all players in terms of receiving competitive and increased salaries at all levels. Thus, through the competition thereby preserved Walker's compensation rose from $75,000 for the 1971-72 season to $120,000 and $125,000 for the 1972-73 and 1973-74 playing seasons. In September 1974, Walker signed a contract with Chicago providing for a one-year stated term for the 1974-75 season and a one-year option period (the 1975-76 season) for compensation of $165,000 per year, plus no-cut and no-trade terms (which meant that Chicago guaranteed his salary and could not trade Walker either in the 1974-75 or in the 1975-76 option year).

28. Prior to August 1, 1975 Chicago tendered to Walker a contract providing for salary of at least $165,000 (100% of his prior salary), which tender under NBA rules served to exercise the team's option for Walker's services for the 1975-76 season. Thus, by the team having exercised its one-year option, Walker was obligated under NBA rules to play for Chicago for the 1975-76 season, even though Walker might not sign the tendered contract. According to the NBA's rules Walker could not play in the NBA or ABA for another team during the 1975-76 season, but under NBA rules he could sign with and play for any other NBA team for any season after that one if he played for Chicago that season, and under court decisions he could play for any ABA team even if he sat out the option year.

29. Walker had been injured and in the hospital during the summer of 1975. His deposition was taken over a two-day period in August 1975. He never indicated to class counsel during the summer that he was having any contract dispute with Chicago. I discovered in October 1975, after the 1975-76 season began, that Walker was not playing, had gone to California to seek employment in the movie industry, had not signed a contract for the 1975-76 season and had sought an increase in salary from Chicago for the option year to a sum well in excess of $165,000. The first specific information I had concerning any such contract dispute with Chicago came when I read articles in the press quoting Walker to the effect that he had retired from basketball rather than play with Chicago again (See news articles dated November 21, 1975 from the New York Post and San Francisco Chronicle annexed hereto as Exhibit B).

30. Although Walker had negotiated a no-trade contract with Chicago, which meant that Chicago could not trade him at any time without his consent, Walker informed me in November 1975 that he wished to be traded, but that if he could not be traded, he was retiring from basketball. Lawrence Fleisher contacted representatives of other teams in the NBA in an effort to effect a trade for Walker, but was unsuccessful. Walker was not traded and he persisted in his refusal to play for Chicago. Nothing in the Settlement Agreement prevents Walker from having earned $165,000 had he played for Chicago pursuant to his no-cut contract in the 1975-76 season. Any contract claims he has against Chicago are preserved by this Settlement. Class counsel did not participate in

giving any advice which Mr. Walker may have received regarding his contract dispute.

31. In early January 1976, well into the 1975-76 NBA season, settlement negotiations among the named plaintiffs, class members and the owners commenced. During the week of January 26, 1976 while these settlement discussions were proceeding and only a few days after the hearing of the NBA's motion to enjoin Wilt Chamberlain from prosecuting his California action (discussed below), Mr. Phillips called me to say that he represented Walker and asked whether I was aware of Walker's situation. I said that all I knew was that Walker had declined to play for Chicago during this option year and had announced his retirement. Phillips stated that he was considering bringing a separate action on Walker's behalf to test the legality of the one-year option provision which was contained in Walker's contract and which required Walker to play for Chicago for the 1975-76 season. I asked Mr. Phillips whether he intended to intervene in this action and he said no. I told him that Wilt Chamberlain had filed an antitrust action in California attacking the same restraints attacked in this action, that the NBA had moved this Court to enjoin that action and that this Court had indicated at a hearing held on January 23 that he would enjoin Chamberlain's separate action. I told Mr. Phillips that in light of the Chamberlain situation, particularly since Mr. Walker was a named plaintiff in this action, the NBA would move to enjoin any separate action filed by Walker which included claims raised in this antitrust action.

32. I also told Mr. Phillips that no Court had ever held the one-year option to be illegal and that Judge Carter had not only ordered a trial to be commenced on June 1, 1976 on the issue, inter alia, of the option clause, but that the Court had already ruled in his February 14, 1975 opinion that he was not expressing any opinion as to the option part of the reserve system in the NBA. I further stated that since discovery was to end on January 31, 1976 and that a host of defenses raised by the NBA would have to be tried, I believed it unlikely that this Court (or any other court) would issue any preliminary injunction on the sole issue of the one-year option. Mr. Phillips agreed to call me back before he took any action, but he failed to do so. On January 31, I read in the press that Mr. Phillips had filed an antitrust action on Walker's behalf in Philadelphia on January 30, 1976 and discovered upon reading that complaint that Walker's action covered the same ground as this class complaint covered.

33. The next time I spoke to Mr. Phillips was at a dinner in Philadelphia on February 2, 1976, the night that the settlement in principle of this action was announced, following the further negotiations that had taken place in Philadelphia on February 1 and 2, 1976. I asked Mr. Phillips whether Walker had told him that I had been relieved as Walker's counsel and Mr. Phillips informed me that I had not been. On February 2, 3 and 4 the terms of the settlement in principle were set for prominently in the press around the country. (See Exhibit C annexed hereto).

34. On February 6, 1976 NBA counsel and I reported to this Court the outlines of the settlement in principle that had been reached. Later that day Mr. Phillips called me and asked what the settlement terms were. I told him that the press reports were essentially accurate. He told me that he had read about the terms of the settlement in the press, he believed that it was a good settlement for all players, including Chet Walker and the other players he represented, and that he had no intention of objecting to the settlement on behalf of any player he represented, including Chet Walker. The only thing he wanted to accomplish, which the settlement did not and could not accomplish, he said, was to get Walker to play for another NBA team before March 1, 1976 -- a date he stated was crucial under NBA rules. Mr. Phillips said that he realized that he was seeking to break new antitrust ground in attempting to get the isolated one-year option declared illegal per se. I again told him that in my judgment no court would so hold without a full blown trial. Mr. Phillips said he did not want a trial on the merits for Walker but merely sought to force the NBA to trade him to another team.

35. The facts set forth in paragraphs 31-34 above appear in the transcript of hearing (pp. 20-25), dated February 17, 1976, on the NBA's motion to enjoin Walker's Philadelphia action. Without stating any reasons or supplying any other facts (Transcript of February 17, 1976, pp. 26, 34), Phillips simply denied all such facts at that hearing. The Court at that hearing stated it would enjoin Walker's separate action, concluding that there was no way by which the legality of the one-year option could be determined absent

a full trial expected to last at least eight weeks (Transcript of February 17, 1976 hearing, at pp. 19, 30, 32; Transcript of February 3, 1976 hearing, at pp. 16, 22-23). The Court enjoined Walker's separate action on February 27, 1976.

36. Thereafter, Mr. Walker moved to remove my firm as counsel for Walker and to be replaced by Mr. Phillips' firm. Although that motion was unopposed, I filed an affidavit dated March 16, 1976 explaining our position as to Mr. Walker. That affidavit is annexed hereto as Exhibit D, and the facts stated therein to date have not been rebutted by anyone now acting on Mr. Walker's behalf.*

37. On May 28, 1976, without benefit of any supporting affidavit from Messrs. Walker or Phillips, we received a Notice of Motion and Memorandum seeking on Walker's behalf to postpone the hearing on the Settlement Agreement from June 23 so "that there may be sufficient time to complete discovery". That motion is still sub judice, but no reason was given why Walker's counsel, who had been aware of the settlement since early in February, previously had failed to inspect any part of the voluminous Court file or to request from our firm an opportunity to inspect any part of the record of this case, other than to ask on May 24, 1976 for a copy of the Settlement Agreement. That sole request was immediately complied with. Neither has Mr. Phillips

* The Court has not formally ruled on that motion, but has informed Mr. Phillips that he could appear for Mr. Walker at the hearing on the Settlement Agreement. It should be noted that we as plaintiffs' and class counsel, signed the Settlement Agreement on behalf of all plaintiffs with the expressed exception of Mr. Walker.

sought to explain the fact that in the more than four months that Mr. Phillips has known of the settlement terms (none of which have changed in any respect regarding Mr. Walker's situation), Mr. Phillips had done nothing to prepare his objections. Nor has he explained why discovery in this case is allegedly incomplete, despite the 45,000 pages of transcripts of depositions of 143 witnesses deposed over 250 deposition days; nearly 180,000 pages of documents; thousands of interrogatory answers; and two volumes covering some 1,300 printed pages of Congressional testimony and exhibits (See also Fee Affidavit ¶¶17-18, at pp. 13-21).

38. Although the information validly sought by Phillips' motion to delay has been provided to him, we expressly made available our whole file of the case since 1970 for his inspection. However, in the three weeks since Mr. Phillips made the motion, he has taken no steps to review even a single piece of paper in that file.

39. On June 8, 1976, more than a month after the Notice of Class Action Settlement was sent, three months after Walker formally received an outline of the terms of Settlement in a letter sent by Lawrence Fleisher, with the approval of the Court, to all class members (See Fleisher Aff. ¶4), and four months after Phillips had been advised of the terms of Settlement, we received (four days late) the "objections" on behalf of Walker, again without any supporting affidavit swearing to a single fact. It should also be noted that the Court found it "invalid" for Mr. Phillips to try to persuade the Court that as of February 3, 1976 he had never even read the complaint in this action (Transcript of February 3, 1976 hearing, at pp. 5-6, 14).

40. Until this juncture in the action, Mr. Walker has always been a tireless representative of the entire class. His deposition, like that of the other 13 named plaintiffs and 70 other class members, was taken by the NBA defendants, and he produced documents demanded by and responded to interrogatorites posed by the NBA defendants. He, like all class members, joined the battle in Congress to prevent legislative exemption for a merger between the competing professional basketball leagues. Unfortunately, the same cannot be said for Mr. Phillips. He never once aided the players in their fight in Congress, nor helped in any way during the six year litigation. Indeed, the converse is true. His deposition was noticed by the NBA in this action for November 10, 1975 as one of many third-party witnesses who acted as individual players' contract negotiators. Not only did Mr. Phillips refuse to answer our phone calls made with a view to meeting with him to explain the purpose of the action and to help prepare him based on other depositions but he also refused to produce a single document from his files and thereby required the class to expend extra time and money to seek similar documentation from a variety of other possible sources.

41. Moreover, Mr. Phillips in 1971, prior to class certification in this action, filed an antitrust action similar to this one in Philadelphia on behalf of Wali Jones, a class member. That action sought to enjoin many of the same practices challenged by this action and sought damages of up to one million dollars on behalf of Jones. That action later was dismissed by Mr. Phillips, with prejudice, although not a

single practice challenged therein was eliminated or modified and although Jones received not a single penny of damages. Despite that dismissal with prejudice, and NBA counsel's initial predilection to claim res judicata with respect to Mr. Jones, class counsel has been able to include Mr. Jones in this settlement, with a full share of the Settlement Fund. And although Mr. Phillips claims to represent some 30 class members, he never intervened on behalf of any of them in this action, and never filed any claim for Mr. Walker until the day before the end of discovery in this case and then in another court.

42. Mr. Walker will receive from the proposed settlement $28,879.11 -- the same amount that every player who played from the 1966-67 through the 1974-75 playing seasons receives. If and when he comes out of retirement, Mr. Walker will receive all the benefits from the Settlement Agreement in terms of the elimination and modification of the restraints in the NBA in the same manner as all other future NBA players. Walker's objections will be addressed below in paragraphs 55-82.

Wilton N. ("Wilt") Chamberlain

43. Wilt Chamberlain, like Chet Walker, has been a member of the class since the inception of this class action in April 1970. He, too, in March 1970, specifically and in writing authorized the filing of this action on his behalf. Chamberlain, too, is a retired player, who played in the NBA from the 1959-60 season until the end of the 1972-73 season. Chamberlain is 40 years of age.

44. Chamberlain, like all class members, has benefited tremendously from this litigation and settlement. In the 1966-67 season, the last season prior to the start of ABA competition, his compensation from the Philadelphia team was $93,000 annually. With the start of competition, his compensation rose to $150,000 annually for the 1967-68 season and $200,000 per year plus stock interests from the Los Angeles team for the 1969-70 and 1970-71 seasons. Following the injunction against the merger obtained by class counsel, and the victorious Congressional episode, which preserved competition, Chamberlain received a contract from Los Angeles for a stated term of two years (1971-72 and 1972-73), plus a one-year option, for $430,000 and $450,000, plus forgiveness of a $67,000 loan.

45. In 1973 Chamberlain sought to sign a contract to play for an ABA team for the option year of his contract with the Los Angeles NBA team. He was enjoined by a California court on the motion of the Los Angeles Lakers from playing with any other team during the option year, and in an arbitration before a neutral arbitrator provided for in the NBA collective bargaining agreement with the Players Association, the arbitrator found that the team had properly exercised its option, meaning that Chamberlain under NBA rules had to play for that team and no other during the 1973-74 season. He chose to sit out that year as a player, but signed a contract as a coach in the ABA for that year and as a player in the ABA for the following year (1974-75) for compensation reported to be $600,000. Obviously, if the merger of the ABA and NBA had previously been allowed to occur, Chamberlain would never have received compensation approaching these amounts.

46. Chamberlain never again played professional basketball in either the NBA or the ABA. After one year of retirement as a player, he indicated before the 1974-75 season that he wished to play again. Arthur Wirtz, an owner of the Chicago team, expressed interest and invited Chamberlain to discuss negotiating for a contract, but Chamberlain failed to appear. He sat out the 1974-75 season.

47. In the summer of 1975, after two full years of retirement as a player and at the age of 39, Chamberlain indicated again through his Los Angeles counsel, Sy Goldberg, that he wished to play in the NBA. The Los Angeles team claimed exclusive rights to his services, because he had not played for it in the option year of his contract and still owed it one year of services (1973-74).* The NBA issued a statement on October 2, 1975 that Chamberlain indeed owed Los Angeles one year of service, and directed the team to perform its contractual obligations to Chamberlain assuming he appeared to offer his services. Thereafter, the NBA made Chamberlain a free agent, allowing him to sign with any NBA team, subject to the reserve compensation rule. That is, if after the signing by Chamberlain with another NBA team, the two teams were unable to agree on what compensation Los Angeles would receive for losing their rights to Chamberlain, the NBA commission could award compensation to Los Angeles. Chamberlain has not signed with any other team, although testimony in this case indicates that efforts were made to sign him. Nothing in the Settlement Agreement prevents Chamberlain from having earned $450,000 had he played for Los Angeles in the 1975-76 season.

* The Lakers had given Wirtz permission to try to negotiate with Chamberlain prior to the 1974-75 season.

48. Also, the Settlement Agreement expressly preserves any contract claim Chamberlain has regarding the events of 1975-76.

49. On December 22, 1975, about one month before discovery was ordered to be completed in this case, Chamberlain, through Mr. Boone, filed a separate antitrust action in Los Angeles attacking the same practices challenged by this action, and seeking injunctive relief and damages for Chamberlain against the same defendants in this action. On January 9, 1976, this Court at the behest of the NBA defendants, issued a temporary restraining order enjoining that Los Angeles action, and following a hearing on January 23, 1976 on the NBA's motion for a preliminary injunction staying that action, the Court on March 31, 1976 issued an injunction against Chamberlain's action.

50. Like Mr. Phillips with respect to Mr. Walker, Mr. Boone indicated to the Court that he wanted to have his cake and eat it too with respect to Chamberlain. Boone stated that he wanted both to be in the case (to continue to get all the benefits of the class action) and to stay out of the case (to preserve for Chamberlain all his allegedly unique claims, whether antitrust or contract). (See Transcript of January 23, 1976 hearing, at pp. 8-10.)

51. Chamberlain, like Ray and Walker and all class members, has been kept advised of the progress of this suit periodically at each material point. He, too, appeared for a deposition taken by the NBA defendants, and once he appeared, he cooperated fully. Mr. Chamberlain never once expressed to class counsel, or to anyone else to my knowledge, that he would object to the settlement. Indeed, Mr. Boone informed me several weeks ago in Court that he had not even seen or spoken to Chamberlain about any objection.

52. Mr. Boone practiced with the firm who represented Chamberlain in the litigation and arbitration in 1973 relating to Chamberlain's attempt to play for another team during the 1973-74 option year. Thus, Mr. Boone knew or should have known as early as 1973 that the Los Angeles Lakers asserted rights to Chamberlain for the option year, but Boone never intervened in this action for Chamberlain, and waited until December, 1975, at the very end of discovery, to make claims for Chamberlain in another action. That same law firm also represents the ABA and is the one which filed cross-claims and counterclaims against these named plaintiffs and this class in 1974, seeking millions of dollars from the class. These claims were dropped after we moved to protect the class against that attack. Mr. Boone was also counsel for the ABA against a class member, Spencer Haywood, who successfully entered the NBA as a player in 1971 over attempts to exclude him from the league. Mr. Boone has never aided the claims of the class in any way, either in any court proceeding or in the Congressional phase of this action.

53. On June 7 (three days late), we received Chamberlain's "objections" filed by Mr. Boone, without any supporting affidavit of any kind. Mr. Chamberlain will receive from the settlement fund $26,887.45, the same amount that all class members who played in the NBA from 1966-67 through 1972-73 will receive. Should Mr. Chamberlain ever decide to play again, he will receive the same benefits afforded all class members under the Settlement Agreement by virtue of the eliminated and modified practices in the NBA. The grounds of objection raised by Mr. Boone on his behalf are also addressed below.

54. Given the above factual background with respect to the three objectors, I now turn to the specifics of the objections themselves. Nowhere in those objections is there any sign of recognition of the situation confronting players in the NBA prior to, during and as a result of the settlement of this action. Rather, the two counsel for the objecting class members who purport to give any reasons for objecting to the settlement attempt to pick the proposed settlement apart, piecemeal, without any apparent awareness of any of the many factors discussed herein which entered into the decision of the named plaintiffs and class members to settle this action.

Alleged Impropriety of Class Certification

55. Both Walker (Walker Memorandum, pp. 1-7) and Chamberlain (Chamberlain Objection, ¶¶1-3) primarily base their opposition to the settlement upon the fact that the Court did not permit them to prosecute separate actions which asserted exactly the same claims as were encompassed by this action.

56. From the outset of this action in Court, in Congress and before the NLRB, class counsel proceeded on the assumption that the nature of the action required uniform treatment of all players and uniform rules that would be applicable to all players. The proposed settlement continues this valid assumption. The practices that will be eliminated and changed had to be dealt with in a uniform manner applicable to all players. It would have been impossible and, in my view, erroneous to fashion special relief for certain players, because every concerned participant in professional basketball recognizes that absent uniformity of certain rules, a basketball league simply cannot function. That is precisely the reason why we filed a class action, why we so bitterly opposed the NBA's attempts to break up the class (see Fee Affidavit, pp. 11, 14-15) and why this Court correctly certified this case as a 23(b)(1) class at the request of the named plaintiffs including Walker. Events subsequent to that class action determination in February, 1975 have proved that certain players could be induced to bring separate actions, threatening the very consistency of resolution of the matters challenged by this action which is required by the nature of professional basketball.

57. Mr. Walker's counsel complains in opposition to the settlement that he is precluded by the settlement from prosecuting a separate antitrust action in Philadelphia upon Walker's behalf. But, the settlement did not preclude such action. Rather, the NBA obtained an injunction against Mr. Walker's separate action from Judge Carter on February 27, 1976 and Mr. Phillips did not even see fit to appeal from that order, which was entered nearly four months ago.

58. Mr. Boone who, on Mr. Chamberlain's behalf, did appeal from this Court's order enjoining his California action but who withdrew that appeal voluntarily still complains that the settlement bars Mr. Chamberlain from suing to enforce his rights. However, it is clear that Mr. Chamberlain may have a contract claim against one or more NBA defendants and such claim will not be extinguished by this settlement. Mr. Boone acknowledged at the January 23 hearing that Chamberlain was "adequately represented by the Robertson plaintiffs" for all occurrences transpiring when Chamberlain played in the NBA, and recognized that his claim for occurrences that transpired in the Fall of 1975 might well be a contract claim (See Transcript of January 23, 1976 hearing, at pp. 9-10).

59. The law which supports this Court's certification of a (b)(1) class is set forth in our accompanying Memorandum of Law, as Point I. The cases cited there reveal that the Constitutional arguments raised by Walker and Chamberlain in regard to this (b)(1) certification lack any merit, particularly because full and formal notice of the proceedings was given to all class members, even though formal notice was not required under Rule 23(b)(1), and because Walker and Chamberlain voluntarily participated on behalf of the class during the prosecution of this action and at this hearing.*

Alleged Inadequacy and Unfairness of the Settlement

60. Walker's objection seeks to paint the settlement as one which allegedly perpetuates per se antitrust violations and the case as one which could not be lost by plain-

* It is unconscionable for Mr. Phillips to quote a portion of the Supreme Court's opinion in Hansberry v. Lee which deals with fraud without stating which fraud he believes took place in the conduct of this case. I defy Mr. Phillips to substantiate his innuendo and know that the Court will not lightly accept this kind of smear tactic.

tiffs (Walker Memorandum, pp. 8-12; See also Chamberlain Objection, ¶5). In so objecting, Walker concludes without legal or factual foundation that judicial holdings of per se antitrust violations have been previously made as to the practices that will survive the Settlement Agreement, and both objectors seek to force the whole class to trial on issues that were validly compromised. These objections are based merely upon the ipse dixits of counsel, and lack the merit of any analysis or foundation in truth.

61. The Court has expressly ruled that the original practices sued upon were not subject to per se tests. Whatever class counsel believed about these original practices is therefore immaterial in the context of court approval of the changed practices rendered by the settlement. What the Court has already held is the solely relevant factor, and since the changed practices all clearly benefit the class, it is a fortiori that this Court would not consider the changed practices to be per se illegal.

62. Mr. Walker's counsel cites (Walker Memorandum, p. 8) a passage from this Court's opinion of February 14, 1975 in which the Court denied the motion of the NBA for summary judgment for the proposition that the Court did rule all the practices to be illegal per se. However, he neglects to note that summary judgment was not awarded to the plaintiffs on any issue in this case. Mr. Walker's counsel further fails to note that many times during the past year in this litigation, this Court expressly stated that he had not found any of the challenged practices to be per se violations of the antitrust

laws and that we would have to have a full-scale trial on the merits to determine both liability and damages. The Court set June 1, 1976 as the date for commencement of the liability trial. See Court's Opinion of July 8, 1975 (67 F.R.D. 691, 694); Transcripts of hearings of May 19, 1975 at pp. 43-46; of December 1, 1975 at pp. 58, 65; of December 8, 1975 at pp. 27-38; of December 12, 1975 at pp. 47, 123; of February 3, 1976 at pp. 12, 22 and of April 9, 1976 at p. 20. The consensus among counsel in this case is that the liability phase of the trial would take from two to four months, to be followed (if the plaintiffs prevailed as to liability) by further discovery as to specific damages and then followed by a trial as to damages that could take another few months.

63. Also, Mr. Phillips fails to note that the Court specifically left open for trial fact issues concerning the reasonableness of the challenged practices, the business necessity for these practices and whether these practices were acquiesced in by the players through collective bargaining.

64. It is in this light that we must examine Mr. Phillips' claims on behalf of Walker concerning the alleged perpetuation of "obviously" illegal per se practices. In specifically attacking the modifications made in the college draft, Mr. Phillips fails to note that Walker was subjected to the college draft more than 14 years ago and can no longer be injured by or have standing to object to the revised draft rules (see our Memorandum, Part II.). Moreover, he fails to comprehend the limited nature of the modified draft

to be used henceforth in the NBA, and fails even to mention the salutory changes obtained in the hardship draft rules. No case (including the inapposite cases cited by Mr. Phillips) has ever ruled definitively on the validity of the original NBA draft, much less the draft as revised by the Settlement Agreement.

65. Neither objector speaks to the fact that the once perpetual reserve clause was changed to a one-year option during the prosecution of this action, or to the elimination of that option under the Settlement Agreement. This lack of comment from Walker's counsel is all the more surprising since it was the operation of the one-year option alone which bound Walker to play for Chicago in the 1975-76 season. Walker's real complaint then should be focused on the one-year option, but as noted above this Court has made it clear to all that it was not prepared to rule, short of a full-scale trial, that the one-year option was illegal per se, unconnected to the whole package of restraints originally sued on by the players. Not one of the cases cited by Mr. Phillips in other sports dealt with the validity of the option clause within the context of a system of rules as modified by the Settlement Agreement.

66. While Walker does seek to attack the modifications in the reserve compensation rule as allegedly containing per se violations, no support is offered for that conclusion. Mr. Phillips on Walker's behalf does cite a portion of this Court's opinion of February 14, 1975 (389 F.Supp. 867, 895), but neglects to cite the relevant portions of that opinion where the Court specifically held that it was making no

tentative conclusion prior to trial on the merits as to the legality of the reserve system -- i.e., the one-year option coupled with a compensation rule (389 F.Supp. at 896). Moreover, although the Mackey case cited by Mr. Phillips found football's Rozelle Rule to be illegal, it did so only after a 55 day trial, in which 63 witnesses appeared, involving 400 exhibits and 11,000 transcript pages, and Judge Larson immediately stayed any implementation of his ruling.

67. More particularly, despite the hockey cases relied upon by Mr. Phillips, in hockey many more onerous restraints exist on players and there will be no phase out of compensation or elimination of the option clause or limitation on the draft of players. In football all the restraints which existed before still exist in unchanged form, and of course, in baseball, which is not subject to the antitrust laws at all, the restraints are even more pervasive. In sum, this settlement in professional basketball represents a landmark settlement for all sports to use as a model.

68. Chamberlain contends that his antitrust claim is not covered by the Robertson case, in that it was not the reserve compensation rule which was applied to him but rather a new and different "indemnification rule". I am not aware of any "indemnification rule" ever applicable in the NBA with respect to Chamberlain or otherwise. When Mr. Chamberlain was declared to be a free agent in October 1975 by the NBA Commissioner, he was rendered subject to the same compensation rule that is applicable to all free agents who completed the option year in their contracts. Thus nothing "different" happened to Chamberlain.

69. The objection is made that the reserve compensation rule is not eliminated immediately under the Settlement Agreement. However, as a practical matter, there was no conceivable method by which this practice could be eliminated immediately under any circumstances. The Mackey case, which took 55 days to try before a judge, would have been dwarfed by the length of time it would have taken to try this case. Unlike Mackey, which attacked only the Rozelle Rule, this action challenged the entire system of player allocation in the NBA. Mackey, moreover, was not a jury trial, this one would have been; Mackey involved only 16 plaintiffs, this case involved 479 class members; and the Mackey case did not have a trial on damages. Further, as noted above, even though at the end of the Mackey trial that Court ruled football's Rozelle Rule to be illegal, it stayed execution of its judgment pending appeal, so that the Rozelle Rule continued in operation.

70. Thus, in this case it was conservatively estimated that the liability and damage trials would not have ended until at least June 1977, and that even if plaintiffs won, elimination of the challenged practices would have been stayed pending appeals, which appeals certainly would have been taken to the Supreme Court. Hence, it was likely that even with a trial court victory, no practice would have been judicially eliminated for at least two or three years after trial, taking us at least until 1979 or 1980. This built-in time factor persuaded the plaintiff and class member negotiators to compromise on a phase-out of the reserve compensation rule, rather than its immediate elimination. There was

absolutely no way in which the practice, even assuming its ultimate invalidity, could have been eliminated in time to help Chamberlain or Walker.

71. Walker also attacks the right of first refusal which will come into being with the 1981 NBA season. Assuming that Walker will ever be impacted by a rule that will not exist until Walker is 42 years old, Walker cites no factual basis for his counsel's conclusion that a new per se antitrust violation is being created by the Settlement Agreement. Characteristically, no analysis or reasoning is set forth in Mr. Phillips' memorandum and certainly no case has ever been involved with a right of first refusal, since no such practice has ever before been attempted in any professional sport, much less ruled on as to its validity.

72. Finally with respect to the contention that the Settlement Agreement creates and perpetuates per se antitrust violations, the Court should be aware that we have kept the Antitrust Division of the Justice Department constantly apprised of all important developments in this case since 1970. We sent the Antitrust Division a copy of the Settlement Agreement as soon as it was executed, and we have not heard a word from the Division concerning any supposed perpetuation of per se illegal restraints. The legal basis upon which this settlement rests and with which presumably the Justice Department agrees, in contradiction to the assertions of antitrust invalidity, are set forth in our Memorandum of Law, Point II.

73. Messrs. Walker and Chamberlain both assert also that their share of the Settlement Fund is inadequate. However, no basis in fact is afforded by objecting counsel. Neither one points out that the damages claimed by them ($185,000 for Walker and an unspecified amount for Chamberlain) might have been avoided by each of them in 1975. It is not the Settlement Agreement which caused them the damages they claim.

74. Mr. Walker's counsel complains that Walker will receive only approximately $29,000 in settlement, but he fails to note that this sum is the third highest settlement amount received by any player and is within $1,000 of the highest amount received. Chamberlain's $26,887 recovery is the sixth largest amount received by any class member. In each case these amounts are about three times the average settlement figure and about eight times the median figure. It should be noted that in the leading case setting standards for approval of class action settlements in the Second Circuit (City of Detroit v. Grinnell Corp., 495 F. 2d 448 (2d Cir. 1974), in which the firm in which Walker's counsel practices was the class counsel, the Court approved as sufficient a settlement of a nationwide class action antitrust case with an eleven-year damage period, in which the average amount received by each class member was merely $635 as compared with the average $9,100 to be received here. Mr. Phillips' firm characterized as fair a settlement in that case which gave a net $8.5 million recovery to over 14,000 class members. Mr. Walker's counsel

as class counsel in another antitrust suit, Grunin v. International House of Pancakes, 513 F. 2d 114 (8th Cir. 1975) characterized as fair a recovery of only $500,000 for former franchisees and no monetary recovery for present franchisees except for certain modified practices (although the attorneys recovered $1,250,000). Surely, then, there is no basis upon which to find unreasonable a net distributable recovery of $4,300,000 for 479 class members, in no way diminished by attorneys' fees.

75. Mr. Phillips also specifically objects to the settlement formula by which the settlement recovery by Mr. Walker was calculated. It is unclear whether Mr. Chamberlain also is objecting to the formula. The formula applied to the Settlement Fund is described in detail in the Plan of Allocation, annexed as Exhibit L to the Settlement Agreement; in the Notice of Class Action Settlement sent to each class member; and in my Fee Affidavit, ¶26(a). Although Mr. Phillips does not believe that this method of allocation -- based upon the number of years played in the NBA and the specific years played to take into account the varying degrees of competition for players' services at different times -- is fair, no player has ever objected to use of precisely that method of allocation in determining eligibility for and amounts receivable under the NBA pension and severance plans for all NBA players, including Walker and Chamberlain.

76. To adopt Mr. Phillips' view of a "fair" method of allocation -- one allegedly based on the relative earning power of each class member -- would require a separate damage trial as to each of the 479 class members. That is, in order

to determine "relative earning power" not only would each class member have to prove as to himself how much he would have earned during each year of the ten-year damage period, he would also have to prove how much he would have earned in relation to each other class member. Assuming conservatively that each such separate damage trial as to each class member would take only one or two hours to complete, the damage trial which Mr. Phillips envisions for the class would take between 480 and 960 hours -- a total of from 12 to 24 weeks of trial as to damages alone, at an indeterminate cost to the class and causing a substantial and unnecessary strain on an already overburdened Court.

77. Moreover, Mr. Phillips' method of allocation would lead to the incongruous result that the more the player earns because of increased competition, the more he should get by way of recovery, and the less the player earned in days of no competition for players' services, the less the player should get from the Settlement Fund. This is backwards reasoning and should be rejected for its inherent anti-competitive bias.

78. Further, Mr. Phillips' method of allocation totally ignores the fact that many players may have been found to have earned the maximum they could have earned and would have received nothing at a damage trial. In this regard it is interesting to note that Mr. Phillips ignores the results of the Joe Kapp case in football, (Kapp v. National Football League, No. C-72-537, N.D. Cal. 1976) in which after a finding of liability based upon illegality of certain restraints in football, the jury trial on damages resulted

in a verdict of no damages for plaintiff. Mr. Kapp's case closely parallels Mr. Walker's, in that both players refused to play for their teams. But the Walker case is infinitely worse for the player since Kapp was not bound by a contract containing an option clause which committed him to play for his team beyond the stated term of his contract and he was excluded from playing football anywhere in the NFL. Walker had signed a contract providing for an option year, had had the option clause applied to him twice before and was not excluded from playing basketball -- he could have earned at least $165,000 just by reporting to Chicago last year. The analogy between Kapp and Chamberlain is equally clear.

79. Moreover, these objections to the amount of recovery and the formula for allocating the recovery fail to take into account the ability of the NBA defendants to pay the huge damage amounts which these objectors believe ought to have been recovered. Assuming, as Mr. Phillips does, that everyone could recover at least one year's salary, I am convinced that such a damage figure arrived at by judgment or settlement would be uncollectible. The average salary in the NBA last year was approximately $109,000, so that for the 220 still active class members, the "recovery" would be about $24 million before trebling. To that figure must

be added a sum for each of the other 260 class members, at an assumed average of $55,000 (the median salary in the 1971-72 season) -- that figure is $14,300,000 before trebling. Hence Mr. Phillips is talking about an untrebled recovery of over $38 million. However, unlike class counsel, Mr. Phillips has not been involved in discovery in this action or in negotiations, as a result of which the players and counsel who negotiated the settlement became convinced that the NBA most probably could not, and certainly would not, pay more in settlement. He is also apparently unaware of or unwilling to accept the fact that the salary increases for the whole class during the pendency of and as a direct result of this action have totalled over $10 million, so that conservatively speaking the monetary benefits already received and to be received by the class easily exceed $14 million. Nor is any recognition given to the increased intra-league competition that will emanate, with the resultant increased compensation to the players, from the modifications in and elimination of the intra-league practices in the NBA in the future.

80. As class counsel, we became convinced and were specifically told by the NBA that $4.3 million was the most that could be negotiated in settlement of this action. As class counsel we had a responsibility to all class members to see to it that the NBA was not driven out of business by a judgment or a settlement that it could not afford to pay.

We had the duty to investigate how much was affordable and how much in damages we could hope to recover for the class in litigation. We were involved in making damage calculations in preparation for trial, and we knew how much was already being paid as "damages" to the players in the form of compensation throughout the litigation as a result of our efforts. We had the responsibility to see to it that all the class members continue to receive pension and severance benefits which were being threatened by the absence of a collective bargaining agreement. If this settlement is upset on the basis of Mr. Phillips second-guessing about the fairness of this settlement, all the players, including his clients, will have to bear the risk of losing those pension and severance benefits as well as the substantial monetary recovery provided in the Settlement Fund. And without an ongoing NBA to pay for such benefits, as well as the players' salaries, a larger recovery (even conceding arguendo that a larger recovery was possible) would do the players no good at all.

81. It is noteworthy that no objections were filed with respect to the amount of settlement or method of allocation by players who earned considerably more than Mr. Walker, and even Mr. Chamberlain, but who stand to receive even less in the way of recovery. From superstar to

journeyman all the players, including Walker and Chamberlain, have always been treated alike in terms of benefits received. No one before has ever complained. And no complaint should be heard now from he counsel who in the Grinnell case used a settlement formula that unlike the instant formula (which is weighted in recognition of the differing degrees of competition at various times since 19) did not even take into account such differing competitive circumstances. Nor does it behoove the lawyer for Wali Jones to object to Chet Walker's receiving some $29,000 when Jones' similar antitrust complaint was dismissed, with prejudice, for zero recovery, and particularly when class counsel have included Jones within the settlement distribution for his full share.

82. Neither Mr. Phillips nor Mr. Boone was involved with me and the players in these negotiations for this settlement when the highest initial offer we could elicit from the NBA defendants was an unsecured promise of $1.8 million payable over ten years. It was only through very hard-nosed bargaining and give and take that we increased the offer to a secured payment of $4,300,000 plus attorneys' fees and costs. Nor were these lawyers involved in prior settlement discussions that took place in 1971 and 1972, when all the players, including Walker and Chamberlain would have accepted a settlement which provided for no monetary payment at all.

Nor were they involved in the 1974 settlement negotiations, where again the players were willing to accept a settlement that provided for no monetary recovery. Unlike other class actions, where settlement discussions are carried on only by counsel and the first the class member learns about the settlement recovery is when he reads the notice of settlement, every class member in this action has to the extent possible been kept abreast of all settlement discussions at every turn (See Fleisher Aff. ¶¶3-5). It is inconceivable that these three players could now be permitted to upset a settlement for 476 other players who approve the settlement, merely for their own reasons, or reasons of their counsel, because they suddenly do not like the way the case which they began and in which they have participated, has ended.

83. Mr. Chamberlain complains about the covenant not to sue appearing in the Settlement Agreement, on the ground that such a covenant "is beyond the power of the District Courts" in class actions. No support is cited for such a unique position, and none is available. In the first place, covenants not to sue are typically included in class action settlements, particularly in Rule 23(b)(1) settlements, because defendants are entitled not to be sued again for the very same things as are being settled. Chamberlain's counsel apparently agrees with that concept, since he admits that a dismissal with prejudice, which has exactly the same effect as a covenant not to sue, would suffice. I have been involved in a score of class action settlements, and in every one a covenant not to sue on behalf of the class was entered into and approved as part of the settlement. I know of no Court which has ever struck such a covenant not to sue.

84. Further, Mr. Boone apparently misreads the covenant not to sue in this Settlement Agreement. It does no more than cover the express antitrust practices sued on and settled in this case and covers no other antitrust claims, and it expressly preserves the contract claims of all class members, even Mr. Chamberlain's (See Settlement Agreement ¶7, at p. 48).

85. Mr. Boone, for Mr. Chamberlain, also seeks to challenge the Special Master provision in the Settlement Agreement. Although Mr. Boone blithly states there is no provision in the law for a Special Master provision, he apparently has not read Federal Rule of Civil Procedure 53 and the cases construing it, which are set forth in Point I of our accompanying Memorandum of Law. Nothing in the Special Master provision deprives Chamberlain of the right to assert in any forum any contract claim which he has or any antitrust claim he has which is not extinguished by the final judgment in this case. And, it is not the Special Master provision but the dismissal with prejudice contained in the Settlement Agreement which properly bars Chamberlain from relitigating his present antitrust claims to the extent they overlap the practices challenged in the Robertson complaint. The Special Master provision, on the other hand, guarantees to the class members that violations of the Settlement Agreement will receive careful scrutiny under auspices of this Court, will receive quick

redress and will keep all such disputes before the very Court which has already invested three years of knowledge and experience into adjudication of the issues in this case. That every standard governing class action settlements has been satisfied in this case and that this settlement is fair, reasonable and adequate as a matter of law is detailed in our Memorandum of Law, Point III.

86. Class counsel has been involved, as have the NBA defendants' counsel, in many complex class action litigations and settlements. The Court has already found us to be worthy class representatives and the settlement in our judgment, given all the circumstances is a fair, reasonable and adequate one. I know of no other class action settlement in which the class members personally participated in the settlement negotiations and were kept as apprised of such negotiations and the results thereof as has occurred in this case. The benefits of 476 class members certainly cannot be dismissed at the whim of three objectors or the two counsel who represent them.

87. It is the Court's knowledge of and experience with the issues and the parties which persuaded the Court to send the settlement notice to the class members in the first place and which we hope will lead the Court to approve the settlement and overrule the objections filed by Messrs. Phillips and Boone on behalf of these three players. They should not be permitted to force the Court, which is aware of the relevant factors that led to the settlement, to try

the case on these objections, for such a course would emasculate the very purpose of the proposed settlement. And, they should not be allowed to stop the settlement in its tracks merely by raising these "objections" which have been shown herein to have no factual basis.

Peter Gruenberger

Sworn to before me this
18th day of June 1976.

Notary Public

JAMES V. QUINN
Notary Public, State of New York
No. 60-4473[illegible]
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 1978

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SAN FRANCISCO CHRONICLE
November 21, 1975

Walker Raps Bulls

Chicago

Chet Walker, a 13-year National Basketball Association veteran, says he quit the Chicago Bulls because they treated him like an idiot.

Walker, the 10th all-time scoring leader in the NBA, announced during the summer that he would not be back in the NBA unless he was traded.

The Bulls, under general manager and coach Dick Motta, refused and without Walker's play now find themselves in a seven-game losing streak and in last place of the NBA's Midwest Division.

Last week, Motta and owner Arthur Wirtz asked Walker to return "without offering more money or anything else. In fact, they were talking about not paying me for the first eight games . . ." Walker said.

"I truly think the Bulls think I'm an idiot — a dumb black man with no pride or principles," he told an interviewer. "I ruined my health for this team, played all last season with a bleeding kidney when the doctors said I could have sat out and drawn my salary . . .

CHET WALKER
In happier days

"When I went into the hospital to get it cleared up, management refused to pay the $470 bill, claiming the injury had nothing to do with basketball. Can you believe that? They finally paid it this summer out of sheer embarrassment.

"Is it too late now? Absolutely. There's nothing the Bulls could do to get me back, even if the money was right. I asked them to trade me and they wouldn't do it . . .

"After all these years, they still treat me like a machine, paid a certain amount of money in exchange for forfeiting my rights as a human being."

Wirtz termed Walker's allegations "absurd."

"He has been given every consideration," said Wirtz. "He made us a proposal he'd like to be in management. If we had an opening, I have the highest regard for him.

"If he wants to play, he's our property. We made him a contract offer that is more than fair."

Associated Press

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'The Bulls Think I'm an Idiot'

CHICAGO (AP) — Chet Walker, a premier NBA forward for 13 years and the league's 10th all-time scorer, says he quit the Bulls because team management treated him like an idiot.

Walker announced after last season that he would not play again in the NBA unless the Bulls traded him. Dick Motta, the general manager and coach, refused, and the team is struggling without Walker. The Bulls have lost seven straight games, are in last place in the NBA's Midwest Division and at 3-9 have the worst record in the league.

Motta and club owner Arthur Wirtz asked Walker to return last week "without offering more money or anything else," the veteran said. "In fact, they were talking about not paying me for the first eight games...

"I truly believe the people who manage the Bulls think I'm an idiot — a dumb black man with no pride or principles," Walker said.

"I ruined my health for this team, played all last season with a bleeding kidney when the doctors said I could have sat out and drawn my salary...

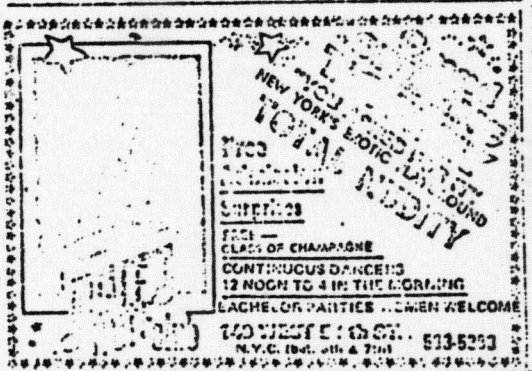
"When I went into the hospital to get it cleared up," he continued, "management refused to pay the $170 bill, claiming the injury had nothing to do with basketball. Can you believe that? They finally paid it this summer out of sheer embarrassment.

"Is it too late now? Absolutely," Walker said. "There's nothing the Bulls could do to get me back, even if the money was right. I asked them to trade me and they wouldn't do it...

"After all these years in the NBA, they still treat me like a machine — paid a certain amount of money in exchange for forfeiting my rights as a human being.

"The thing the Bulls' management can't seem to understand is that I can't be bought. My feeling was that Motta figured Wirtz could call me in and get me back by tossing me a bone..." Walker said.

"I was forced to quit. I was forced to quit by people who wanted to control my destiny. I had a choice of playing basketball in a chaotic situation or retiring and I chose the latter."



N.Y. Post 11/21/75

12-92

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

AFFIDAVIT IN SUPPORT OF SETTLEMENT OF CLASS ACTION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

LAWRENCE FLEISHER, being duly sworn, deposes and says:

1. I am a member of the bar of the State of New York and am General Counsel to the National Basketball Players Association. I am fully familiar with the facts set forth herein. I make this affidavit in support of the proposed Settlement of Class Action and in opposition to the objections of Wilton N. Chamberlain, Chester Walker and Clifford Ray. I have read and agree with all of the statements contained in the affidavits of Oscar Robertson, Robert Lanier and Peter Gruenberger filed in support of the settlement.

2. In 1970, the rules and practices of the NBA defendants operated to permit a team to perpetually maintain the exclusive rights to a player's services.

A player's sole alternative was to play for a team in another league, yet at that time, too, the NBA was planning to merge with the only other professional basketball league, the ABA. Consequently, in March of 1970, every then active player in the National Basketball Association except one* authorized in writing the commencement of an action in his behalf to prevent the merger and to obtain the elimination or modification of the NBA's player allocation practices. At that time, however, caselaw precedent was scant at best, and the players were just hopeful that they could enjoin the merger and in some way ease the total stranglehold which the NBA defendants had over them and create a system recognizing that players, [illegible] not only owners, have rights.

3. Since the discussions held concerning the initial decision to file this action, and continuing throughout the course of the litigation in this Court and in Congress, the players have constantly been kept apprised of the status of the litigation, the positions being considered and advanced by counsel, and the likelihood of settlement and possible terms thereof. Thus, at the beginning of each season I hold (and have held) meetings with the players on each team at which time I explain, inter alia, the aforementioned matters relating to this litigation. Furthermore, all of the player representatives of each team meet with me twice each year, at the All-Star break and at the end of the season. At these meetings, too, the conduct and possible settlement of the litigation as well as acceptable legislative remedies have been discussed and the player representatives communicate the substance of these discussions to the players.

* The sole exception, Connie Hawkins, had just concluded the settlement of a litigation with the NBA defendants.

4. In addition, in a further effort to keep the class informed, since 1970 I have included information about the progress and possible settlement of this action in various written communications to the players in the form of newsletters and minutes of the Players Association meetings, and a letter of March 1, 1976 to the entire class (sent with the approval of this Court) outlining the general terms of the settlement. A copy of that letter is annexed hereto as Exhibit A. No player ever expressed any dissatisfaction with this settlement until these objections were filed in June, and no player ever expressed any dissatisfaction with prior settlements that never were finalized, which were not nearly as good as this one is from the players' point of view. Thus, Walker and Chamberlain are well aware that the settlement proposed herein is far superior both to the settlements previously considered acceptable by the players in 1972 and 1974, and to the final merger bill, proposed in 1972 by the Senate Subcommittee on Antitrust and Monopoly, which the players did not oppose. Indeed, Walker, who has been rather deeply involved in these matters as a named plaintiff for six years and, as a player representative until the end of the 1972-73 season, should be particularly attuned to the advantages of the present settlement over previous proposals that were acceptable to the players. Further, they are both also aware that it has consistently been the position of the players that, like pension and severance benefits, any monetary benefits from the settlement would be allocated according to each player's years of service. Walker and Chamberlain (as well as Ray)

actively supported all the players' efforts in this Court and in Congress as well as the players' policy of not favoring any particular player based upon salary considerations. I fail to understand why their counsel would now profess to object to such a policy, particularly since it provides Walker and Chamberlain some $55,000 of damages (more than one percent of the total recovery for only these two players), and at no cost for counsel fees. All players will be repaid previous assessments made toward counsel fees.

5. Based upon my experience in professional basketball (including extensive participation in the prosecution and settlement of this action, both in this Court and in Congress and before the National Labor Relations Board, my activities as General Counsel to the National Basektball Players Association from 1962 through the present and the fact that through all of this I have been in close contact with hundreds of class members), I believe that the proposed settlement unquestionably is fair, reasonable and adequate to every class member, and meets the objectives we had when this case began. The practices in the NBA which prior to this action served to perpetually bind a player to one team, in utter disregard for his economic rights, either have been eliminated or substantially modified. And the provision for a Special Master guarantees that the players can obtain an expedited hearing and redress of any possible violations of the settlement's terms. As a result of the intensive arm's-length settlement negotiations in which we engaged, damages

of $4.3 million will be payable to the class, providing an average recovery of over $9,000 per class member, as well as payment of the substantial costs and attorneys' fees incurred in the course of the six years of litigation. The allocation formula is quite fair since it recognizes both the greater harm suffered by class members in the early years of the damage period when there was little or no competititon for players' services and the future benefits which only the active class members can enjoy. The provision of the settlement which withdraws the players' objections to the merger of the NBA and ABA upon final approval of the settlement is prudent at this time, since four of the ten ABA teams folded this past season and if all the reports I hear are true, it is questionable whether the league will survive another year. (This past year, too, saw the demise of the World Football League as a competitor to the NFL.) Of course, until the NBA players' rights are finally protected (as they are by the settlement) we will continue to object to the merger -- a position we have maintained consistently since 1970.

6. The fairness of this settlement in the players' view is emphasized by the fact that three named plaintiffs (Oscar Robertson, Jeffry Mullins and John Havlicek) and two class members (Paul Silas and Jim McMillian) negotiated the settlement along with me and class counsel, and by the fact that the settlement in principle was unanimously approved by the player representatives on February 2, 1976.

7. In addition, there are intangible benefits of the settlement which further emphasize its fairness and its importance to the very existence of professional basketball. In baseball and football, players and owners resorted to litigation to the death, rather than efforts to reach compromises recognizing the rights, interests and views of all parties. As a result, the relationship between owners and players in those sports has deteriorated to a level that not only impedes the growth of the sport (e.g., in terms of fan disaffection) but also deleteriously affects the players themselves: because of the "litigation-only" approaches there taken, in neither baseball nor football are the players protected by a collective bargaining agreement (with its provisions for pensions, severance, arbitration of disputes, insurance, etc.). In basketball, however, as a result of this settlement, the players and owners have been able to avoid creating such an emotional and negative atmosphere by working out their differences in this Settlement Agreement. Based upon the Settlement Agreement, we were able to successfully negotiate a new long-term collective bargaining agreement (after having gone a full year without one). Counsel for the objectors seem not to care or understand that these collective bargaining benefits will disappear for their own clients, and all players, if the settlement is upset. Although these benefits are perhaps tangential to the settlement itself, they are very real considerations to the players and to the game of basketball, and properly must be considered in evaluating the fairness of the settlement.

8. There are several additional facts which I believe should be brought to the Court's attention, for they go to the heart of the purported objections of Walker and Ray concerning the fairness of the settlement and shed light on the motivations involved in their objections.

9. Chet Walker was in the option year of his contract with the Chicago Bulls at the start of the 1975-76 season. I knew that Mr. Walker had not gone to training camp with his team in October. He told me that he had gone to California to attempt to work in the movie industry, that he was dissatisfied with playing for Chicago any longer, and that he wanted to play professional basketball for another NBA team. Consequently, in an effort to assist him, in November, 1975, I contacted representatives of the Chicago Bulls, several other teams and the NBA league office in an effort to work out a trade. Unfortunately, I was unsuccessful in my attempt. I read in the press that he had retired from basketball. I continued efforts to achieve a trade for Walker thereafter but again was unsuccessful.

10. At the end of January 1976, I learned of the filing of Walker's lawsuit in the Pennsylvania federal court and of the fact that Walker was being represented therein by Richard Phillips. In February, I spoke with both Walker and Phillips about the Robertson case and the agreement in principle which had been reached to settle the action. In those discussions, they stated that they thought the settlement was a

good one, that Walker was not opposed to it and that he did not want to hurt the other players. Walker simply wanted to play professional basketball, but not for the Bulls. Mr. Phillips, in our conversations, stated that he had no intention of objecting on the grounds that it was not a fair settlement for the class, and said that he just wanted Walker to play.

11. I received a telephone call from Phillips on June 7, 1976, and I asked him about the unspecified objection by Clifford Ray served that day. I was unaware of any dissatisfaction with the settlement of Ray. I have been informed by Jeffry Mullins, a named plaintiff and a teammate of Ray on the Golden State Warriors, and George Johnson, another teammate and the player representative of the Warriors that Ray had not expressed any dissatisfaction to them at any time.

12. In light of all the foregoing, as well as for the reasons set forth in the accompanying affidavits and memorandum of law, the settlement should be approved and the objections dismissed.

Lawrence Fleisher
LAWRENCE FLEISHER

Sworn to before me this
18th day of June 1976.

Curtis G. Carter
Notary Public

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., Plaintiffs, -against- NATIONAL BASKETBALL ASSOCIATION, et al., Defendants.	70 Civ. 1526 (RLC) AFFIDAVIT IN SUPPORT OF CLASS ACTION SETTLEMENT

STATE OF OHIO)
) ss.:
COUNTY OF HAMILTON)

OSCAR ROBERTSON, being duly sworn, deposes and says:

1. I am a retired NBA player, and a named plaintiff in this action. I make this affidavit in support of the proposed settlement herein and in opposition to the objections to that settlement which have been filed.

2. I, along with 13 other players, filed this action in April 1970 in order to enjoin the proposed merger of the NBA and ABA and to change the NBA's player allocation system which at that time permitted a team to perpetually hold the rights to a particular player from the time he entered the NBA and which restricted a player's ability to be properly compensated for his services.

3. Since that time I have directly participated in the extensive hearings in Congress on the merger as it affected players' rights, I have filed affidavits, been deposed, produced documents and answered interrogatories in response to the discovery demands of the NBA defendants in this suit, and I have spoken with scores of players about this lawsuit and its goals.

During the course of the litigation, class counsel and Mr. Fleisher kept me and the other players constantly advised about developments in the case and I, as President of the National Basketball Players Association, with the team representatives, made sure that all players were kept advised of the conduct of this litigation.

4. Most recently, I have participated in the settlement negotiations in early 1976, which hopefully have led to a conclusion of this litigation. The negotiations were conducted by a committee of players, including me, Paul Silas, John Havlicek, Jim McMillian and Jeff Mullins. The other players were kept advised about the settlement through meetings, and when their team representatives ratified the settlement, the other players were kept advised through discussions, a letter and notices approved by the Court.

5. I believe that this litigation and the settlement have resulted in exceptionally fair treatment for all the class members. The results of the lawsuit to date, in keeping competition between the ABA and NBA alive for more than six years, have greatly benefitted both past and present players. The settlement goes even further in that it eliminates the reserve clause promptly and phases out and dramatically modifies other practices, combined with its settlement fund of $4.3 million in damages (plus all costs and attorneys' fees) all paid for by defendants. All players, active and retired alike, will benefit thereby in the very way and to the extent we all hoped for when this action was first filed. The settlement exceeds the terms of settlement which all of the players were quite willing to accept at various other times since 1970. Furthermore, based upon my participation in and observation of the settlement negotiations,

I am certain that the settlement contains all of the concessions (both in terms of money and changes in practices) which could possibly be obtained from the NBA defendants.

6. In addition, the proposed formula for distributing the settlement is quite fair. First, in the early years of the damage period, there was no intra-league competition for players' services, and it was not until the ABA had been in existence for a few years that its teams began to become a competitive factor. Thus, it is only fair to award the most damages to class members who played in the NBA at that time and therefore suffered the most. Further, I support the allocation of settlement funds according to the years in which class members played without regard to their relative salaries or earning capacity. I realize that I could stand to recover a much greater share of the settlement fund under the rationale advanced by Chet Walker's counsel than under the present formula. However, I believe that such an approach would be grossly unfair to the players who were hurt the most. Under no circumstances would the named plaintiffs approve a settlement formula, such as the one suggested by Walker's counsel, which inevitably would lead to class members fighting among themselves to divide a recovery. My view concerning treatment of this settlement fund is no different from the method of allocating pension and severance benefits for NBA players, which I, as President of the National Basketball Players Association was instrumental in obtaining. These benefits accrue to players and are computed without regard to individual salaries and are based upon length of service in the NBA.

7. For all of these reasons, I request that this

Court approve the settlement as fair, reasonable and adequate and reject the objections raised.

Oscar Robertson
OSCAR ROBERTSON

Sworn to before me this
17 day of June, 1976.

Robert S Brown

NOTARY PUBLIC-STATE OF OHIO
My commission has no expiration
date, section 147.03 R. C.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

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70 Civ. 1526 (RLC)

AFFIDAVIT IN SUPPORT OF CLASS ACTION SETTLEMENT

STATE OF MICHIGAN)
) ss.:
COUNTY OF WAYNE)

ROBERT LANIER, being duly sworn, deposes and says:

1. I am an active player in the NBA with the Detroit Pistons, a member of the class in this action and an officer of the National Basketball Players Association. I have been in the NBA since the 1970-71 season and I intend to continue to play in the NBA. I make this affidavit in support of the proposed settlement of this class action and in opposition to the objections which have been raised to that settlement.

2. The settlement, in all respects, is quite fair to me and all class members. Active players such as me, as well as future players, will benefit from the extensive changes in the NBA's rules, particularly from the prompt elimination of the option clause from uniform player contracts. Further, although the reserve compensation plan will temporarily remain in effect, it will be entirely eliminated in 1981 and under the terms of the agreement can never be reinstated. I recognize and accept such a phase-out as part of the settlement compromise process. The right of first refusal which replaces the compensation rule

guarantees players the right to negotiate a contract with any team in the league and to sign for the best offer available. In addition, future players will benefit from the drastic reduction of NBA teams' draft rights and the elimination of "hardship" procedures and "four year" draft rules. All of these changes are protected by the provision for a Special Master to hear any claims of violations of the settlement on an expedited basis and subject to review by the Court.

3. In addition, all players will receive substantial damage recoveries from the settlement fund. I believe the method of allocation of that fund is quite fair in providing the greatest recovery for players who played in the early years, since those players then did not have the benefit of as much competition as subsequently arose in later years and thus suffered the greatest damage. And I hold this position even though I would receive a much greater share of the fund under an allocation plan that was not weighed in four of such early years.

4. Although I earn considerably more than objector Chet Walker earned, I believe it is entirely fair and appropriate that the settlement fund be apportioned without regard to the salary or earning potential of the individual class members. Every other benefit shared by players as a group in the NBA has been allocated without regard to such salary distinctions. In this category are pension, severance, per diem and other benefits we players have. I believe the method of allocation provided by the settlement is fair, since it thereby avoids creating ill feeling among players (by forcing them to prove their relative "value" or earning power against one another) which could be

quite detrimental to the players as a whole. Under the present plan, I will receive $7,966.65, which is well below the recovery Chet Walker will receive.

5. I have discussed the settlement with teammates and players on other teams and everyone with whom I have spoken fully supports the settlement in all respects and appreciates the efforts of class counsel since 1970 on all of our behalfs. We have been kept apprised of the progress of the lawsuit from the beginning, and more recently of the settlement, which I and many other players ratified, through letters, meetings and notices from Lawrence Fleisher, class counsel and the Court. I request that the Court approve the proposed settlement.

Robert Lanier
ROBERT LANIER

Sworn to before me this
day of June 1976.

Notary Public